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**LEGISLATIVE ASSEMBLY
OF ONTARIO**

**FIRST SESSION
THIRTY-FOURTH PARLIAMENT**

**BILLS
AS INTRODUCED IN THE HOUSE
TOGETHER WITH
REPRINTS AND THIRD READINGS**

SESSION

November 3rd, 1987 to January 7th, 1988

February 8th to February 11th, 1988

April 5th to June 29th, 1988

and

October 17th, 1988 to March 2nd, 1989

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Bill 128

An Act to amend the Planning Act, 1983

The Hon. J. Eakins

Minister of Municipal Affairs

1st Reading May 4th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The definition of Minister is changed to “Minister of Municipal Affairs” from “Minister of Municipal Affairs and Housing”.

SECTION 2. The list of matters that the Minister must have regard to as being of provincial interest is amended to include the provision of a range of housing types.

SECTION 3. The proposed subsection 3 (6) would clarify that section 3 does not affect the duties and responsibilities of the Minister under other provisions of the Act.

SECTIONS 4 and 5. The addition of the proposed subsection 4 (2a) and the amendments to subsection 5 (2) of the Act will ensure that when the Minister's consent-granting authority has been delegated, the same provisions will apply to the exercise of that authority as apply to municipal councils and delegates thereof. Subsection 5 (1) of the Act is re-enacted and a new subsection 5 (1a) is enacted to ensure that a council may not delegate the authority to approve amendments to official plans without the prior written approval of the Minister.

SECTION 6.—Subsection 1. Subsections 17 (14) to (17) of the Act now read as follows:

(14) The parties to a referral are the person or other body, if any, that requested the referral, the municipality and any person or other body added as a party by the Municipal Board.

(15) The Municipal Board may add as a party to the referral any person, including the Minister or other body who applies to the Board to be added as a party.

(16) Despite the fact that a person is not a party to the referral, the Municipal Board may permit the person to make representations at the hearing.

(17) On a referral to the Municipal Board, the Board shall hold a hearing of which notice shall be given to the parties to the referral, and to such other persons or bodies as the Board considers appropriate.

As re-enacted, subsection 17 (14) will permit the Municipal Board to, in effect, establish the parties on a reference to the Board in respect of an official plan.

Subsection 2. Subsection 17 (19) of the Act provides that where an official plan is before the Municipal Board on a reference, the Minister of Municipal Affairs may advise the Board by a notice in writing that a matter of provincial interest is adversely affected by the plan or part thereof, and thereupon the decision of the Board on that part of the plan identified in the notice is not binding unless confirmed by the Lieutenant Governor in Council. The amendment will permit the Minister to give the notice whenever a provincial interest is affected, whether adversely or beneficially.

SECTION 7. Subsection 20 (1) of the Act now reads as follows:

(1) Two certified copies of the official plan shall be lodged in the office of the Minister and one certified copy in the office of the clerk of each municipality specified by the Minister.

The requirement that copies of the plan be lodged in the office of the Minister has been found to be unnecessary and is deleted.

SECTIONS 8, 9 and 10. These amendments are to the same effect as that set out in subsection 6 (2) of the Bill and are in respect of amendments to an official plan.

SECTION 11.—Subsection 1. Subsection 24 (2) of the Act permits the council of a municipality that has adopted an amendment to an official plan to pass a by-law that doesn't conform with the plan but will conform if the amendment is approved. As re-

enacted, the subsection takes into account the fact that in some instances it is the upper-tier municipal council that is responsible for the official plan that applies to a lower-tier municipality.

Subsection 2. Subsection 24 (4) of the Act provides that where a zoning by-law is not appealed or if appealed the appeal is dismissed or if the by-law is amended as directed on the appeal, then the by-law is deemed to be in conformity with an official plan that is in effect in the municipality. Clause 24 (4) (b), as re-enacted, recognizes that under subsection 34 (27) the Municipal Board on an appeal may itself amend the by-law rather than direct the council of the municipality to do so.

SECTION 12. Subsections 28 (6) and (7) of the Act confer certain powers on a municipality for the purpose of carrying out a community improvement plan, the exercise of which could contravene the restrictions on the granting by a municipal council of assistance to business or commercial enterprises set out in subsection 112 (1) of the *Municipal Act*. Subsection 112 (2) of that Act creates an exception where the council is exercising any of its powers or authority under subsection 28 (6) or (7) of the *Planning Act, 1983* with the approval of the Minister of Municipal Affairs. The proposed new subsection 28 (7a) of the *Planning Act, 1983* explicitly authorizes the Minister to approve the exercise of such power in order that the exception may apply.

SECTION 13.—Subsection 1. Subsection 33 (7) of the Act enables the council of a municipality to attach conditions to a demolition permit for residential property. The new subsection (7a) permits registration of notice of any conditions imposed against the land to which the permit applies.

Subsection 2. Subsection 33 (10) of the Act now permits any person who has obtained a demolition permit under subsection 33 (6) to apply to council for relief from the conditions attached to the demolition permit. Under subsection (10), as re-enacted, such an application may be made by a person who has subsequently become the owner of the permit. Subsection (10a) sets out when and to whom the application is to be made.

The new subsection (10b) permits council to extend the time for making an application for relief under subsection (10).

SECTION 14.—Subsection 1. Subsections 34 (12) and (13) of the Act set out certain requirements to be met by a municipal council before passing a zoning by-law and now read as follows:

(12) Before passing a by-law under this section, the council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed, for the purpose of informing the public in respect of the proposed by-law.

(13) The meeting mentioned in subsection (12) shall be held not sooner than thirty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the proposed by-law.

The re-enactment of subsection (12) makes it clear those requirements do not apply when the by-law is passed on the direction of the Municipal Board following an appeal to it and is rephrased to indicate more accurately the type of information that is to be made available to the public.

The re-enactment of subsection (13) reduces from thirty to twenty days the minimum period of time that must elapse between the giving of the notice and the holding of the meeting.

Subsection 2. The re-enactment of subsection 34 (15) of the Act requires council to forward the information to boards, commissions and other agencies that may have an interest in the matter not less than twenty days before passing the by-law.

New subsection (15a) permits such a board, etc., to require up to an additional ten days to submit comments on the zoning proposal.

Subsection 3. The re-enactment of subsections 34 (17) and (18) and the enactment of new subsection 34 (18a) vary the time within which an appeal of a zoning by-law may be brought. The appeal period will commence to run from the day notice of the passing of the by-law is given rather than from the day the by-law is passed and the effect is to shorten the appeal period when a municipality is prompt in giving notice of the passing of the by-law.

Subsection 4. The re-enactment of subsection 34 (22) of the Act is to the same effect as that set out in subsection 6 (1) of the Bill in relation to the power of the Municipal Board to establish the parties on an appeal to the Board in respect of a zoning by-law.

Subsection 5. The amendment is similar in intent to that set out in subsection 6 (2) of the Bill and refers to a matter of provincial interest affected by a zoning by-law.

SECTION 15. Subsection 35 (2) of the Act provides that a zoning by-law of a local municipality shall not include a "holding provision" unless its official plan contains provisions relating to that concept. As re-enacted, the subsection recognizes that in some instances it is the upper-tier municipal council that is responsible for the official plan that applies to a lower-tier municipality.

SECTION 16. The re-enactment of subsection 36 (2) of the Act is to the same intent as the amendment set out in section 15 of the Bill and refers to increased density provisions in a zoning by-law.

SECTION 17. The paragraph added to clause 40 (8) (a) of the Act empowers an upper-tier municipality to require matters relating to drainage to be provided to its satisfaction in connection with site plan control approvals.

SECTION 18. The re-enactment of subsection 41 (4) of the Act is to the same effect as that set out in sections 15 and 16 of the Bill and refers to a requirement as a condition of development or redevelopment of land that land be conveyed to a municipality for park purposes at a rate of not more than one hectare for each 300 dwelling units proposed.

SECTION 19. These amendments make consistent the appeal procedures on minor variance decisions under section 44 with those that apply to consent decisions under section 52.

SECTION 20.—Subsection 1. The amendment enables the Minister, in respect of any land in Ontario, to exercise the powers conferred upon councils in respect of interim land control and temporary uses of land.

Subsection 2. The amendment is similar to that set out in subsections 6 (2) and 14 (5) of the Bill and refers to a matter of provincial interest that is affected by a proposed revocation or amendment of a zoning or subdivision control order made by the Minister under subsection 46 (1) of the Act.

SECTION 21. The amendment is complementary to those set out in sections 4 and 5 of the Bill to ensure that the same provisions will apply in the exercise of the Minister's delegated consent-granting authority.

SECTION 22.—Subsection 1. Subsection 52 (7) of the Act describes who is entitled to appeal a decision on an application for a consent and is set out below, showing underlined the words to be added by the amendment:

(7) The applicant, the Minister and every agency or other person to whom notice of the decision was sent either as required under subsection (5) or otherwise, including notice sent in accordance with a condition of delegation of the authority to grant consents may

within thirty days of the making of the decision appeal to the Municipal Board against the decision by filing with the clerk of the municipality, the council of which made the decision, a notice of appeal setting out written reasons in support of the appeal and accompanied by payment to the clerk of the fee prescribed by the Board under the Ontario Municipal Board Act.

The amendment is intended to make it clear that whoever is sent a notice of the decision is entitled to appeal it, including a body who had delegated the authority to grant the consent.

Subsection 2. Subsection 52 (20) of the Act provides that where conditions imposed on the granting of a consent are not fulfilled within one year of the granting of the consent, the application for the consent shall be deemed to be refused. The words added by the amendment provide that where there has been an appeal or reference to the Municipal Board, the one-year period does not commence to run until the date of the Board's order on the appeal or referral.

SECTION 23. Subsection 56 (1) of the Act permits the validation by order of the Minister of conveyances of land made before the 19th day of March, 1973, that contravened the subdivision control provisions of the Act. The re-enactment permits such validation whether the contravention occurred before or after the 19th day of March, 1973.

SECTION 24. Under the Act, planning boards may charge fees only when planning functions have been assigned to them by the Minister. The re-enactment of subsections 68 (1) and (2) will permit planning boards to charge fees in respect of any of their planning functions.

SECTION 25. Complementary to section 24 of the Bill.

Bill 128

1988

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (e) of the *Planning Act, 1983*, being chapter 1, is repealed and the following substituted therefor:

(e) "Minister" means the Minister of Municipal Affairs.

2. Section 2 of the said Act is amended by striking out "and" at the end of clause (h) and by adding thereto the following clause:

(j) the provision of a range of housing types.

3. Section 3 of the said Act is amended by adding thereto the following subsection:

(6) Except as provided in subsection (5), nothing in this section affects nor restricts the Minister in the carrying out of the Minister's duties and responsibilities under any other section of this Act including the determining or declaring of any matter to be a matter of provincial interest and the procedure followed in so determining or declaring.

Non-
applicability
of section

4. Section 4 of the said Act is amended by adding thereto the following subsection:

(2a) Despite subsections (1) and (2), where the Minister has delegated the authority of the Minister under section 52 for the granting of consents, subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications and subsections 52 (10) to (14) do not apply, in the exercise of that authority.

Where
authority to
grant
consents
delegated

5.—(1) Subsection 5 (1) of the said Act is repealed and the following substituted therefor:

(1) Where the Minister has delegated any authority to a council under section 4, such council may, in turn, by by-law,

Further
delegation of
powers

and subject to such conditions as may have been imposed by the Minister, delegate any of such authority, other than the authority to approve official plans, to a committee of council or to an appointed officer identified in the by-law either by name or position occupied and such committee or officer, as the case may be, has, in lieu of the Minister, all the powers and rights of the Minister in respect of such delegated authority and shall be responsible for all matters pertaining thereto including the referral of any matter to the Municipal Board.

Limitation

(1a) Despite subsection (1), a council may not delegate the authority to approve amendments to official plans without the prior written approval of the Minister, which approval may be subject to such further conditions as the Minister considers appropriate.

(2) Subsection 5 (2) of the said Act is amended by striking out “and the provisions of subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications in the exercise of that authority” in the seventh, eighth and ninth lines.

6.—(1) Subsections 17 (14), (15), (16) and (17) of the said Act are repealed and the following substituted therefor:

Hearing and
notice
thereof

(14) On a referral to the Municipal Board, the Board shall hold a hearing, of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

(2) Subsection 17 (19) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

7. Subsection 20 (1) of the said Act is repealed and the following substituted therefor:

Lodging of
plan

(1) A certified copy of the official plan shall be lodged in the office of the clerk of each municipality to which the plan or any part of the plan applies.

8. Subsection 21 (2) of the said Act is amended by striking out “adversely” in the second line.

9. Subsection 22 (5) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

10. Subsection 23 (1) of the said Act is amended by striking out “adversely” in the third line.

11.—(1) Subsection 24 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a council has adopted an amendment to an official plan, the council of any municipality to which the plan or any part of the plan applies may, before the Minister has approved the amendment, pass a by-law that does not conform with the official plan but will conform therewith if the amendment is approved, and the by-law shall be conclusively deemed to have conformed with the official plan on and from the day it was passed if the Minister approves the amendment to the official plan.

Validity of
by-laws
conforming
with
amendments
to plans

(2) Clause 24 (4) (b) of the said Act is repealed and the following substituted therefor:

- (b) an appeal is taken and the appeal is dismissed or the by-law is amended by the Municipal Board or as directed by the Municipal Board,

.

12. Section 28 of the said Act is amended by adding thereto the following subsection:

(7a) Where the council of the municipality proposes to exercise any power or authority under subsection (6) or (7) that would be prohibited under subsection 112 (1) of the *Municipal Act*, the Minister may approve the exercise of such power or authority in order that the exception provided for in subsection 112 (2) of the *Municipal Act* will apply.

Approval of
Minister

R.S.O. 1980,
c. 302

13.—(1) Section 33 of the said Act is amended by adding thereto the following subsection:

(7a) Notice of any condition imposed under subsection (7) may be registered in the proper land registry office against the land to which it applies.

Registration
of notice

(2) Subsection 33 (10) of the said Act is repealed and the following substituted therefor:

(10) Where a condition has been imposed under subsection (7) and the holder of the demolition permit considers that it is not possible to complete the new building within the time specified in the permit or where the holder of the permit is of the opinion that the construction of the new building has become not feasible on economic or other grounds, the permit holder may apply to the council of the municipality for relief from the conditions on which the permit was issued.

Application
to council for
relief from
conditions of
demolition
permit

(10a) Notice of application under subsection (10) shall be sent by registered mail to the clerk of the municipality not less

Notice of
application

than sixty days before the time specified in the permit for the completion of the new building and, where the council under subsection (11) extends the time for completion of the new building, application may similarly be made for relief by sending notice of application not less than sixty days before the expiry of the extended completion time.

Extension of
time

(10b) Despite subsection (10a), the council may, at any time, extend the date specified in that subsection for the making of an application for relief from the conditions on which the permit was issued.

14.—(1) Subsections 34 (12) and (13) of the said Act are repealed and the following substituted therefor:

Information
and public
meeting

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed.

Time for
meeting, etc.

(13) The meeting mentioned in subsection (12) shall be held not sooner than twenty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the zoning proposal.

(2) Subsection 34 (15) of the said Act is repealed and the following substituted therefor:

Information
to agencies,
etc.

(15) The council shall forward to such boards, commissions, authorities or other agencies as the council considers may have an interest in the zoning proposal sufficient information to enable them to understand it generally and such information shall be forwarded not less than twenty days before passing a by-law implementing the proposal.

Extension of
time for
submission of
comments

(15a) Where a board, commission, authority or other agency receives information under subsection (15), such board, commission, authority or agency may in writing notify the clerk of the municipality at any time before the expiry of the twenty-day period mentioned in subsection (15) that a further period of time is required to submit comments in respect of the zoning proposal and, where notice is so given, a by-law implementing the proposal may not be passed until either the comments have been received by the council or thirty days

have elapsed from the date that the information was forwarded under subsection (15), whichever first occurs.

(3) Subsections 34 (17) and (18) of the said Act are repealed and the following substituted therefor:

(17) Where the council passes a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the clerk of the municipality shall give written notice of the passing of the by-law in the manner and in the form and to the persons and agencies prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (18).

Notice of
passing of
by-law

(18) Any person, including the Minister or agency, may, not later than the twentieth day after the day that the giving of written notice as required by subsection (17) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

Appeal to
O.M.B.

(18a) For the purposes of subsection (18), the giving of written notice shall be deemed to be completed,

When giving
of notice
deemed
completed

- (a) where notice is given by publication in a newspaper, on the day that such publication occurs;
- (b) where notice is given by personal service, on the day that the serving of all required notices is completed; and
- (c) where notice is given by mail, on the day that the mailing of all required notices is completed.

(4) Subsections 34 (22), (23), (24) and (25) of the said Act are repealed and the following substituted therefor:

(22) On an appeal to the Municipal Board, the Board shall hold a hearing of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

Hearing and
notice
thereof

(5) Subsection 34 (28) of the said Act is amended by striking out “adversely” in the third line and in the eighth line.

15. Subsection 35 (2) of the said Act is repealed and the following substituted therefor:

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the

Condition

local municipality that contains provisions relating to the use of the holding symbol mentioned in subsection (1).

16. Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

17. Clause 40 (8) (a) of the said Act is amended by adding thereto the following paragraph:

4. Where the land abuts a highway under the jurisdiction of the county or regional, metropolitan or district municipality, grading or alteration in elevation or contour of the land in relation to the elevation of the highway and provision for the disposal of storm and surface water from the land.

18. Subsection 41 (4) of the said Act is repealed and the following substituted therefor:

Official plan
requirement

(4) The alternative requirement authorized by subsection (3) may not be provided for in a by-law passed under this section unless there is an official plan in effect in the local municipality that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement.

19.—(1) Subsection 44 (10) of the said Act is amended by striking out “by mail” in the second line.

(2) Subsection 44 (12) of the said Act is amended by striking out “serving personally on or sending by registered mail to” in the fourth and fifth lines and inserting in lieu thereof “filing with”.

(3) Subsection 44 (13) of the said Act is amended by striking out “served or sent to him” in the second line and inserting in lieu thereof “filed”.

20.—(1) Clause 46 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34,

37 or 38, but subsections 34 (12) to (31) do not apply to the exercise of such powers; and

(2) Subsection 46 (15) of the said Act is amended by striking out “adversely” in the fourth line.

21. Subsection 49 (1) of the said Act is amended by striking out “section 52 to the Minister or to a council, as the case may be, includes a delegate thereof as provided for in sections 4, 5 and 53” in the twenty-ninth, thirtieth and thirty-first lines and inserting in lieu thereof “subsections 52 (1), (2), (17), (18), (19), (21) and (22) to the Minister includes a delegate of the Minister, as provided for in sections 4 and 54, and a reference herein and in section 52 to a council includes a delegate of a council, as provided for in sections 5 and 53”.

22.—(1) Subsection 52 (7) of the said Act is amended by inserting after “sent” in the second line “either as required under subsection (5) or otherwise, including notice sent in accordance with a condition of delegation of the authority to grant consents”.

(2) Subsection 52 (20) of the said Act is amended by adding at the end thereof “but where there is an appeal under subsection (7) or (8), or a referral under subsection (13) or (14), the application for consent shall not be deemed to be refused for failure to fulfil the conditions until the expiry of a period of one year from the date of the order of the Municipal Board issued in respect of the appeal or referral”.

23. Subsection 56 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may by order, in respect of land described in the order, provide that the contravention of section 49 or a predecessor thereof or of a by-law passed under a predecessor of section 49 or of an order made under clause 27 (1) (b), as it existed on the 25th day of June, 1970, of *The Planning Act*, being chapter 296 of the Revised Statutes of Ontario, 1960, or a predecessor thereof does not have and shall be deemed never to have had the effect of preventing the conveyance of or creation of any interest in such land, provided that the order does not affect the rights acquired by any person from a judgment or order of any court given or made on or before the day on which the order is made by the Minister.

Effect of
contravention
of s. 49, etc.

24. Subsections 68 (1) and (2) of the said Act are repealed and the following substituted therefor:

Tariff of fees

(1) The council of a municipality, by by-law, and a planning board, by resolution, may prescribe a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the municipality or to a committee of adjustment or land division committee constituted by the council of the municipality or to the planning board in respect of the processing of each type of application provided for in the tariff.

Reduction or
waiver of
fees

(2) Notwithstanding that a tariff of fees is prescribed under subsection (1), the council of a municipality, a planning board, a committee of adjustment or a land division committee in processing an application may reduce the amount of or waive the requirement for the payment of a fee in respect of the application where the council, planning board or committee is satisfied that it would be unreasonable to require payment in accordance with the tariff.

25. Clause 69 (d) of the said Act is repealed.

Commence-
ment

26.—(1) This Act, except sections 3 and 4, subsection 5 (2) and section 14, comes into force on the day it receives Royal Assent.

Idem

(2) Section 3 shall be deemed to have come into force on the 1st day of August, 1983 but subsection 3 (6) of the *Planning Act, 1983*, as enacted by section 3 of this Act, does not apply so as to affect the rights acquired by any person from a judgment or order of any court given or made on or before the 4th day of May, 1988.

Idem

(3) Section 4, subsection 5 (2) and section 14 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

27. The short title of this Act is the *Planning Amendment Act, 1988*.



Bill 128

An Act to amend the Planning Act, 1983

The Hon. J. Eakins

Minister of Municipal Affairs

1st Reading May 4th, 1988

2nd Reading February 21st, 1989

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. The definition of Minister is changed to "Minister of Municipal Affairs" from "Minister of Municipal Affairs and Housing".

SECTION 2. The list of matters that the Minister must have regard to as being of provincial interest is amended to include the provision of a range of housing types.

SECTION 3. The proposed subsection 3 (6) would clarify that section 3 does not affect the duties and responsibilities of the Minister under other provisions of the Act.

SECTIONS 4 and 5. The addition of the proposed subsection 4 (2a) and the amendments to subsection 5 (2) of the Act will ensure that when the Minister's consent-granting authority has been delegated, the same provisions will apply to the exercise of that authority as apply to municipal councils and delegates thereof. Subsection 5 (1) of the Act is re-enacted and a new subsection 5 (1a) is enacted to ensure that a council may not delegate the authority to approve amendments to official plans without the prior written approval of the Minister.

SECTION 6.—Subsection 1. Subsections 17 (14) to (17) of the Act now read as follows:

(14) The parties to a referral are the person or other body, if any, that requested the referral, the municipality and any person or other body added as a party by the Municipal Board.

(15) The Municipal Board may add as a party to the referral any person, including the Minister or other body who applies to the Board to be added as a party.

(16) Despite the fact that a person is not a party to the referral, the Municipal Board may permit the person to make representations at the hearing.

(17) On a referral to the Municipal Board, the Board shall hold a hearing of which notice shall be given to the parties to the referral, and to such other persons or bodies as the Board considers appropriate.

As re-enacted, subsection 17 (14) will permit the Municipal Board to, in effect, establish the parties on a reference to the Board in respect of an official plan.

Subsection 2. Subsection 17 (19) of the Act provides that where an official plan is before the Municipal Board on a reference, the Minister of Municipal Affairs may advise the Board by a notice in writing that a matter of provincial interest is adversely affected by the plan or part thereof, and thereupon the decision of the Board on that part of the plan identified in the notice is not binding unless confirmed by the Lieutenant Governor in Council. The amendment will permit the Minister to give the notice whenever a provincial interest is affected, whether adversely or beneficially.

SECTION 7. Subsection 20 (1) of the Act now reads as follows:

(1) Two certified copies of the official plan shall be lodged in the office of the Minister and one certified copy in the office of the clerk of each municipality specified by the Minister.

The requirement that copies of the plan be lodged in the office of the Minister has been found to be unnecessary and is deleted.

SECTIONS 8, 9 and 10. These amendments are to the same effect as that set out in subsection 6 (2) of the Bill and are in respect of amendments to an official plan.

SECTION 11.—Subsection 1. Subsection 24 (2) of the Act permits the council of a municipality that has adopted an amendment to an official plan to pass a by-law that doesn't conform with the plan but will conform if the amendment is approved. As re-

enacted, the subsection takes into account the fact that in some instances it is the upper-tier municipal council that is responsible for the official plan that applies to a lower-tier municipality.

Subsection 2. Subsection 24 (4) of the Act provides that where a zoning by-law is not appealed or if appealed the appeal is dismissed or if the by-law is amended as directed on the appeal, then the by-law is deemed to be in conformity with an official plan that is in effect in the municipality. Clause 24 (4) (b), as re-enacted, recognizes that under subsection 34 (27) the Municipal Board on an appeal may itself amend the by-law rather than direct the council of the municipality to do so.

SECTION 12. Subsections 28 (6) and (7) of the Act confer certain powers on a municipality for the purpose of carrying out a community improvement plan, the exercise of which could contravene the restrictions on the granting by a municipal council of assistance to business or commercial enterprises set out in subsection 112 (1) of the *Municipal Act*. Subsection 112 (2) of that Act creates an exception where the council is exercising any of its powers or authority under subsection 28 (6) or (7) of the *Planning Act, 1983* with the approval of the Minister of Municipal Affairs. The proposed new subsection 28 (7a) of the *Planning Act, 1983* explicitly authorizes the Minister to approve the exercise of such power in order that the exception may apply.

SECTION 13.—Subsection 1. Subsection 33 (7) of the Act enables the council of a municipality to attach conditions to a demolition permit for residential property. The new subsection (7a) permits registration of notice of any conditions imposed against the land to which the permit applies.

Subsection 2. Subsection 33 (10) of the Act now permits any person who has obtained a demolition permit under subsection 33 (6) to apply to council for relief from the conditions attached to the demolition permit. Under subsection (10), as re-enacted, such an application may be made by a person who has subsequently become the owner of the permit. Subsection (10a) sets out when and to whom the application is to be made.

The new subsection (10b) permits council to extend the time for making an application for relief under subsection (10).

SECTION 14.—Subsection 1. Subsections 34 (12) and (13) of the Act set out certain requirements to be met by a municipal council before passing a zoning by-law and now read as follows:

(12) Before passing a by-law under this section, the council shall ensure that adequate information is made available to the public, and for this purpose shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed, for the purpose of informing the public in respect of the proposed by-law.

(13) The meeting mentioned in subsection (12) shall be held not sooner than thirty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the proposed by-law.

The re-enactment of subsection (12) makes it clear those requirements do not apply when the by-law is passed on the direction of the Municipal Board following an appeal to it and is rephrased to indicate more accurately the type of information that is to be made available to the public.

The re-enactment of subsection (13) reduces from thirty to twenty days the minimum period of time that must elapse between the giving of the notice and the holding of the meeting.

Subsection 2. The re-enactment of subsection 34 (15) of the Act requires council to forward the information to boards, commissions and other agencies that may have an interest in the matter not less than twenty days before passing the by-law.

New subsection (15a) permits such a board, etc., to require up to an additional ten days to submit comments on the zoning proposal.

Subsection 3. The re-enactment of subsections 34 (17) and (18) and the enactment of new subsection 34 (18a) vary the time within which an appeal of a zoning by-law may be brought. The appeal period will commence to run from the day notice of the passing of the by-law is given rather than from the day the by-law is passed and the effect is to shorten the appeal period when a municipality is prompt in giving notice of the passing of the by-law.

Subsection 4. The re-enactment of subsection 34 (22) of the Act is to the same effect as that set out in subsection 6 (1) of the Bill in relation to the power of the Municipal Board to establish the parties on an appeal to the Board in respect of a zoning by-law.

Subsection 5. The amendment is similar in intent to that set out in subsection 6 (2) of the Bill and refers to a matter of provincial interest affected by a zoning by-law.

SECTION 15. Section 34a would prohibit municipalities from passing zoning by-laws or interim central by-laws that distinguish between persons who are related and persons who are unrelated in respect of the occupancy of a building or structure.

SECTION 16. Subsection 35 (2) of the Act provides that a zoning by-law of a local municipality shall not include a "holding provision" unless its official plan contains provisions relating to that concept. As re-enacted, the subsection recognizes that in some instances it is the upper-tier municipal council that is responsible for the official plan that applies to a lower-tier municipality.

SECTION 17. The re-enactment of subsection 36 (2) of the Act is to the same intent as the amendment set out in section 16 of the Bill and refers to increased density provisions in a zoning by-law.

SECTION 18. The paragraph added to clause 40 (8) (a) of the Act empowers an upper-tier municipality to require matters relating to drainage to be provided to its satisfaction in connection with site plan control approvals.

SECTION 19. The re-enactment of subsection 41 (4) of the Act is to the same effect as that set out in sections 16 and 17 of the Bill and refers to a requirement as a condition of development or redevelopment of land that land be conveyed to a municipality for park purposes at a rate of not more than one hectare for each 300 dwelling units proposed.

SECTION 20. These amendments make consistent the appeal procedures on minor variance decisions under section 44 with those that apply to consent decisions under section 52.

SECTION 21.—Subsection 1. The amendment enables the Minister, in respect of any land in Ontario, to exercise the powers conferred upon councils in respect of interim land control and temporary uses of land.

Subsection 2. The amendment is similar to that set out in subsections 6 (2) and 14 (5) of the Bill and refers to a matter of provincial interest that is affected by a proposed revocation or amendment of a zoning or subdivision control order made by the Minister under subsection 46 (1) of the Act.

SECTION 22. The amendment is complementary to those set out in sections 4 and 5 of the Bill to ensure that the same provisions will apply in the exercise of the Minister's delegated consent-granting authority.

SECTION 23.—Subsection 1. Subsection 52 (7) of the Act describes who is entitled to appeal a decision on an application for a consent and is set out below, showing underlined the words to be added by the amendment:

(7) The applicant, the Minister and every agency or other person to whom notice of the decision was sent either as required under subsection (5) or otherwise, including notice sent in accordance with a condition of delegation of the authority to grant consents may within thirty days of the making of the decision appeal to the Municipal Board against the decision by filing with the clerk of the municipality, the council of which made the decision, a notice of appeal setting out written reasons in support of the appeal and accompanied by payment to the clerk of the fee prescribed by the Board under the Ontario Municipal Board Act.

The amendment is intended to make it clear that whoever is sent a notice of the decision is entitled to appeal it, including a body who had delegated the authority to grant the consent.

Subsection 2. Subsection 52 (20) of the Act provides that where conditions imposed on the granting of a consent are not fulfilled within one year of the granting of the consent, the application for the consent shall be deemed to be refused. The words added by the amendment provide that where there has been an appeal or reference to the Municipal Board, the one-year period does not commence to run until the date of the Board's order on the appeal or referral.

SECTION 24. Subsection 56 (1) of the Act permits the validation by order of the Minister of conveyances of land made before the 19th day of March, 1973, that contravened the subdivision control provisions of the Act. The re-enactment permits such validation whether the contravention occurred before or after the 19th day of March, 1973.

SECTION 25. Under the Act, planning boards may charge fees only when planning functions have been assigned to them by the Minister. The re-enactment of subsections 68 (1) and (2) will permit planning boards to charge fees in respect of any of their planning functions.

SECTION 26. Complementary to section 25 of the Bill.



Bill 128

1988

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (e) of the *Planning Act, 1983*, being chapter 1, is repealed and the following substituted therefor:

(e) "Minister" means the Minister of Municipal Affairs.

2. Section 2 of the said Act is amended by striking out "and" at the end of clause (h) and by adding thereto the following clause:

(j) the provision of a range of housing types.

3. Section 3 of the said Act is amended by adding thereto the following subsection:

(6) Except as provided in subsection (5), nothing in this section affects nor restricts the Minister in the carrying out of the Minister's duties and responsibilities under any other section of this Act including the determining or declaring of any matter to be a matter of provincial interest and the procedure followed in so determining or declaring.

Non-
applicability
of section

4. Section 4 of the said Act is amended by adding thereto the following subsection:

(2a) Despite subsections (1) and (2), where the Minister has delegated the authority of the Minister under section 52 for the granting of consents, subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications and subsections 52 (10) to (14) do not apply, in the exercise of that authority.

Where
authority to
grant
consents
delegated

5.—(1) Subsection 5 (1) of the said Act is repealed and the following substituted therefor:

(1) Where the Minister has delegated any authority to a council under section 4, such council may, in turn, by by-law,

Further
delegation of
powers

and subject to such conditions as may have been imposed by the Minister, delegate any of such authority, other than the authority to approve official plans, to a committee of council or to an appointed officer identified in the by-law either by name or position occupied and such committee or officer, as the case may be, has, in lieu of the Minister, all the powers and rights of the Minister in respect of such delegated authority and shall be responsible for all matters pertaining thereto including the referral of any matter to the Municipal Board.

Limitation

(1a) Despite subsection (1), a council may not delegate the authority to approve amendments to official plans without the prior written approval of the Minister, which approval may be subject to such further conditions as the Minister considers appropriate.

(2) Subsection 5 (2) of the said Act is amended by striking out “and the provisions of subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications in the exercise of that authority” in the seventh, eighth and ninth lines.

6.—(1) Subsections 17 (14), (15), (16) and (17) of the said Act are repealed and the following substituted therefor:

Hearing and
notice
thereof

(14) On a referral to the Municipal Board, the Board shall hold a hearing, of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

(2) Subsection 17 (19) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

7. Subsection 20 (1) of the said Act is repealed and the following substituted therefor:

Lodging of
plan

(1) A certified copy of the official plan shall be lodged in the office of the clerk of each municipality to which the plan or any part of the plan applies.

8. Subsection 21 (2) of the said Act is amended by striking out “adversely” in the second line.

9. Subsection 22 (5) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

10. Subsection 23 (1) of the said Act is amended by striking out “adversely” in the third line.

11.—(1) Subsection 24 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a council has adopted an amendment to an official plan, the council of any municipality to which the plan or any part of the plan applies may, before the Minister has approved the amendment, pass a by-law that does not conform with the official plan but will conform therewith if the amendment is approved, and the by-law shall be conclusively deemed to have conformed with the official plan on and from the day it was passed if the Minister approves the amendment to the official plan.

Validity of
by-laws
conforming
with
amendments
to plans

(2) Clause 24 (4) (b) of the said Act is repealed and the following substituted therefor:

- (b) an appeal is taken and the appeal is dismissed or the by-law is amended by the Municipal Board or as directed by the Municipal Board,

12. Section 28 of the said Act is amended by adding thereto the following subsection:

(7a) Where the council of the municipality proposes to exercise any power or authority under subsection (6) or (7) that would be prohibited under subsection 112 (1) of the *Municipal Act*, the Minister may approve the exercise of such power or authority in order that the exception provided for in subsection 112 (2) of the *Municipal Act* will apply.

Approval of
Minister

R.S.O. 1980,
c. 302

13.—(1) Section 33 of the said Act is amended by adding thereto the following subsection:

(7a) Notice of any condition imposed under subsection (7) may be registered in the proper land registry office against the land to which it applies.

Registration
of notice

(2) Subsection 33 (10) of the said Act is repealed and the following substituted therefor:

(10) Where a condition has been imposed under subsection (7) and the holder of the demolition permit considers that it is not possible to complete the new building within the time specified in the permit or where the holder of the permit is of the opinion that the construction of the new building has become not feasible on economic or other grounds, the permit holder may apply to the council of the municipality for relief from the conditions on which the permit was issued.

Application
to council for
relief from
conditions of
demolition
permit

(10a) Notice of application under subsection (10) shall be sent by registered mail to the clerk of the municipality not less

Notice of
application

than sixty days before the time specified in the permit for the completion of the new building and, where the council under subsection (11) extends the time for completion of the new building, application may similarly be made for relief by sending notice of application not less than sixty days before the expiry of the extended completion time.

Extension of
time

(10b) Despite subsection (10a), the council may, at any time, extend the date specified in that subsection for the making of an application for relief from the conditions on which the permit was issued.

14.—(1) Subsections 34 (12) and (13) of the said Act are repealed and the following substituted therefor:

Information
and public
meeting

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed.

Time for
meeting, etc.

(13) The meeting mentioned in subsection (12) shall be held not sooner than twenty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the zoning proposal.

(2) Subsection 34 (15) of the said Act is repealed and the following substituted therefor:

Information
to agencies,
etc.

(15) The council shall forward to such boards, commissions, authorities or other agencies as the council considers may have an interest in the zoning proposal sufficient information to enable them to understand it generally and such information shall be forwarded not less than twenty days before passing a by-law implementing the proposal.

Extension of
time for
submission of
comments

(15a) Where a board, commission, authority or other agency receives information under subsection (15), such board, commission, authority or agency may in writing notify the clerk of the municipality at any time before the expiry of the twenty-day period mentioned in subsection (15) that a further period of time is required to submit comments in respect of the zoning proposal and, where notice is so given, a by-law implementing the proposal may not be passed until either the comments have been received by the council or thirty days

have elapsed from the date that the information was forwarded under subsection (15), whichever first occurs.

(3) Subsections 34 (17) and (18) of the said Act are repealed and the following substituted therefor:

(17) Where the council passes a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the clerk of the municipality shall give written notice of the passing of the by-law in the manner and in the form and to the persons and agencies prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (18).

Notice of
passing of
by-law

(18) Any person, including the Minister or agency, may, not later than the twentieth day after the day that the giving of written notice as required by subsection (17) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

Appeal to
O.M.B.

(18a) For the purposes of subsection (18), the giving of written notice shall be deemed to be completed,

When giving
of notice
deemed
completed

- (a) where notice is given by publication in a newspaper, on the day that such publication occurs;
- (b) where notice is given by personal service, on the day that the serving of all required notices is completed; and
- (c) where notice is given by mail, on the day that the mailing of all required notices is completed.

(4) Subsections 34 (22), (23), (24) and (25) of the said Act are repealed and the following substituted therefor:

(22) On an appeal to the Municipal Board, the Board shall hold a hearing of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

Hearing and
notice
thereof

(5) Subsection 34 (28) of the said Act is amended by striking out "adversely" in the third line and in the eighth line.

15. The said Act is amended by adding thereto the following section:

34a.—(1) The authority to pass by-laws under subsections 34 (1) and 37 (1) does not include the authority to pass by-laws that distinguish between persons who are related and

No authority
to distinguish
on basis of
relationship

persons who are unrelated in respect of the occupancy of a building or structure.

Idem

(2) A provision in a by-law that distinguishes between persons who are related and persons who are unrelated in respect of the occupancy of a building or structure ceases to have effect on the day this section comes into force. ▲

16. Subsection 35 (2) of the said Act is repealed and the following substituted therefor:

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the use of the holding symbol mentioned in subsection (1).

17. Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

18. Clause 40 (8) (a) of the said Act is amended by adding thereto the following paragraph:

4. Where the land abuts a highway under the jurisdiction of the county or regional, metropolitan or district municipality, grading or alteration in elevation or contour of the land in relation to the elevation of the highway and provision for the disposal of storm and surface water from the land.

19. Subsection 41 (4) of the said Act is repealed and the following substituted therefor:

Official plan
requirement

(4) The alternative requirement authorized by subsection (3) may not be provided for in a by-law passed under this section unless there is an official plan in effect in the local municipality that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement.

20.—(1) Subsection 44 (10) of the said Act is amended by striking out “by mail” in the second line.

(2) Subsection 44 (12) of the said Act is amended by striking out “serving personally on or sending by registered mail to” in

the fourth and fifth lines and inserting in lieu thereof “filing with”.

(3) Subsection 44 (13) of the said Act is amended by striking out “served or sent to him” in the second line and inserting in lieu thereof “filed”.

21.—(1) Clause 46 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34, 37 or 38, but subsections 34 (12) to (31) do not apply to the exercise of such powers; and
-

(2) Subsection 46 (15) of the said Act is amended by striking out “adversely” in the fourth line.

22. Subsection 49 (1) of the said Act is amended by striking out “section 52 to the Minister or to a council, as the case may be, includes a delegate thereof as provided for in sections 4, 5 and 53” in the twenty-ninth, thirtieth and thirty-first lines and inserting in lieu thereof “subsections 52 (1), (2), (17), (18), (19), (21) and (22) to the Minister includes a delegate of the Minister, as provided for in sections 4 and 54, and a reference herein and in section 52 to a council includes a delegate of a council, as provided for in sections 5 and 53”.

23.—(1) Subsection 52 (7) of the said Act is amended by inserting after “sent” in the second line “either as required under subsection (5) or otherwise, including notice sent in accordance with a condition of delegation of the authority to grant consents”.

(2) Subsection 52 (20) of the said Act is amended by adding at the end thereof “but where there is an appeal under subsection (7) or (8), or a referral under subsection (13) or (14), the application for consent shall not be deemed to be refused for failure to fulfil the conditions until the expiry of a period of one year from the date of the order of the Municipal Board issued in respect of the appeal or referral”.

24. Subsection 56 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may by order, in respect of land described in the order, provide that the contravention of section 49 or a predecessor thereof or of a by-law passed under a predecessor

Effect of
contravention
of s. 49, etc.

of section 49 or of an order made under clause 27 (1) (b), as it existed on the 25th day of June, 1970, of *The Planning Act*, being chapter 296 of the Revised Statutes of Ontario, 1960, or a predecessor thereof does not have and shall be deemed never to have had the effect of preventing the conveyance of or creation of any interest in such land, provided that the order does not affect the rights acquired by any person from a judgment or order of any court given or made on or before the day on which the order is made by the Minister.

25. Subsections 68 (1) and (2) of the said Act are repealed and the following substituted therefor:

Tariff of fees

(1) The council of a municipality, by by-law, and a planning board, by resolution, may prescribe a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the municipality or to a committee of adjustment or land division committee constituted by the council of the municipality or to the planning board in respect of the processing of each type of application provided for in the tariff.

Reduction or
waiver of
fees

(2) Notwithstanding that a tariff of fees is prescribed under subsection (1), the council of a municipality, a planning board, a committee of adjustment or a land division committee in processing an application may reduce the amount of or waive the requirement for the payment of a fee in respect of the application where the council, planning board or committee is satisfied that it would be unreasonable to require payment in accordance with the tariff.

26. Clause 69 (d) of the said Act is repealed.

Commence-
ment

27.—(1) This Act, except sections 3 and 4, subsection 5 (2) and section 14, comes into force on the day it receives Royal Assent.

Idem

(2) Section 3 shall be deemed to have come into force on the 1st day of August, 1983 but subsection 3 (6) of the *Planning Act, 1983*, as enacted by section 3 of this Act, does not apply so as to affect the rights acquired by any person from a judgment or order of any court given or made on or before the 4th day of May, 1988.

(3) Section 4, subsection 5 (2) and section 14 come into force ^{Idem} on a day to be named by proclamation of the Lieutenant Governor.

28. The short title of this Act is the *Planning Amendment* ^{Short title} *Act, 1989.*



Bill 128

(Chapter 5
Statutes of Ontario, 1989)

An Act to amend the Planning Act, 1983

The Hon. J. Eakins
Minister of Municipal Affairs

<i>1st Reading</i>	May 4th, 1988
<i>2nd Reading</i>	February 21st, 1989
<i>3rd Reading</i>	February 23rd, 1989
<i>Royal Assent</i>	February 27th, 1989



Bill 128

1988

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (e) of the *Planning Act, 1983*, being chapter 1, is repealed and the following substituted therefor:

(e) "Minister" means the Minister of Municipal Affairs.

2. Section 2 of the said Act is amended by striking out "and" at the end of clause (h) and by adding thereto the following clause:

(j) the provision of a range of housing types.

3. Section 3 of the said Act is amended by adding thereto the following subsection:

(6) Except as provided in subsection (5), nothing in this section affects nor restricts the Minister in the carrying out of the Minister's duties and responsibilities under any other section of this Act including the determining or declaring of any matter to be a matter of provincial interest and the procedure followed in so determining or declaring.

Non-
applicability
of section

4. Section 4 of the said Act is amended by adding thereto the following subsection:

(2a) Despite subsections (1) and (2), where the Minister has delegated the authority of the Minister under section 52 for the granting of consents, subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications and subsections 52 (10) to (14) do not apply, in the exercise of that authority.

Where
authority to
grant
consents
delegated

5.—(1) Subsection 5 (1) of the said Act is repealed and the following substituted therefor:

(1) Where the Minister has delegated any authority to a council under section 4, such council may, in turn, by by-law,

Further
delegation of
powers

and subject to such conditions as may have been imposed by the Minister, delegate any of such authority, other than the authority to approve official plans, to a committee of council or to an appointed officer identified in the by-law either by name or position occupied and such committee or officer, as the case may be, has, in lieu of the Minister, all the powers and rights of the Minister in respect of such delegated authority and shall be responsible for all matters pertaining thereto including the referral of any matter to the Municipal Board.

Limitation

(1a) Despite subsection (1), a council may not delegate the authority to approve amendments to official plans without the prior written approval of the Minister, which approval may be subject to such further conditions as the Minister considers appropriate.

(2) Subsection 5 (2) of the said Act is amended by striking out “and the provisions of subsections 52 (2) to (9) and (15) to (22) apply with necessary modifications in the exercise of that authority” in the seventh, eighth and ninth lines.

6.—(1) Subsections 17 (14), (15), (16) and (17) of the said Act are repealed and the following substituted therefor:

Hearing and
notice
thereof

(14) On a referral to the Municipal Board, the Board shall hold a hearing, of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

(2) Subsection 17 (19) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

7. Subsection 20 (1) of the said Act is repealed and the following substituted therefor:

Lodging of
plan

(1) A certified copy of the official plan shall be lodged in the office of the clerk of each municipality to which the plan or any part of the plan applies.

8. Subsection 21 (2) of the said Act is amended by striking out “adversely” in the second line.

9. Subsection 22 (5) of the said Act is amended by striking out “adversely” in the fourth line and in the ninth line.

10. Subsection 23 (1) of the said Act is amended by striking out “adversely” in the third line.

11.—(1) Subsection 24 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a council has adopted an amendment to an official plan, the council of any municipality to which the plan or any part of the plan applies may, before the Minister has approved the amendment, pass a by-law that does not conform with the official plan but will conform therewith if the amendment is approved, and the by-law shall be conclusively deemed to have conformed with the official plan on and from the day it was passed if the Minister approves the amendment to the official plan.

Validity of
by-laws
conforming
with
amendments
to plans

(2) Clause 24 (4) (b) of the said Act is repealed and the following substituted therefor:

- (b) an appeal is taken and the appeal is dismissed or the by-law is amended by the Municipal Board or as directed by the Municipal Board,

.

12. Section 28 of the said Act is amended by adding thereto the following subsection:

(7a) Where the council of the municipality proposes to exercise any power or authority under subsection (6) or (7) that would be prohibited under subsection 112 (1) of the *Municipal Act*, the Minister may approve the exercise of such power or authority in order that the exception provided for in subsection 112 (2) of the *Municipal Act* will apply.

Approval of
Minister

R.S.O. 1980,
c. 302

13.—(1) Section 33 of the said Act is amended by adding thereto the following subsection:

(7a) Notice of any condition imposed under subsection (7) may be registered in the proper land registry office against the land to which it applies.

Registration
of notice

(2) Subsection 33 (10) of the said Act is repealed and the following substituted therefor:

(10) Where a condition has been imposed under subsection (7) and the holder of the demolition permit considers that it is not possible to complete the new building within the time specified in the permit or where the holder of the permit is of the opinion that the construction of the new building has become not feasible on economic or other grounds, the permit holder may apply to the council of the municipality for relief from the conditions on which the permit was issued.

Application
to council for
relief from
conditions of
demolition
permit

(10a) Notice of application under subsection (10) shall be sent by registered mail to the clerk of the municipality not less

Notice of
application

than sixty days before the time specified in the permit for the completion of the new building and, where the council under subsection (11) extends the time for completion of the new building, application may similarly be made for relief by sending notice of application not less than sixty days before the expiry of the extended completion time.

Extension of
time

(10b) Despite subsection (10a), the council may, at any time, extend the date specified in that subsection for the making of an application for relief from the conditions on which the permit was issued.

14.—(1) Subsections 34 (12) and (13) of the said Act are repealed and the following substituted therefor:

Information
and public
meeting

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons prescribed.

Time for
meeting, etc.

(13) The meeting mentioned in subsection (12) shall be held not sooner than twenty days after the requirements for the giving of notice have been complied with and shall be open to the public, and any person who attends the meeting shall be afforded an opportunity to make representation in respect of the zoning proposal.

(2) Subsection 34 (15) of the said Act is repealed and the following substituted therefor:

Information
to agencies,
etc.

(15) The council shall forward to such boards, commissions, authorities or other agencies as the council considers may have an interest in the zoning proposal sufficient information to enable them to understand it generally and such information shall be forwarded not less than twenty days before passing a by-law implementing the proposal.

Extension of
time for
submission of
comments

(15a) Where a board, commission, authority or other agency receives information under subsection (15), such board, commission, authority or agency may in writing notify the clerk of the municipality at any time before the expiry of the twenty-day period mentioned in subsection (15) that a further period of time is required to submit comments in respect of the zoning proposal and, where notice is so given, a by-law implementing the proposal may not be passed until either the comments have been received by the council or thirty days

have elapsed from the date that the information was forwarded under subsection (15), whichever first occurs.

(3) Subsections 34 (17) and (18) of the said Act are repealed and the following substituted therefor:

(17) Where the council passes a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (27), the clerk of the municipality shall give written notice of the passing of the by-law in the manner and in the form and to the persons and agencies prescribed and the notice shall specify the last day for filing a notice of appeal under subsection (18).

Notice of
passing of
by-law

(18) Any person, including the Minister or agency, may, not later than the twentieth day after the day that the giving of written notice as required by subsection (17) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.

Appeal to
O.M.B.

(18a) For the purposes of subsection (18), the giving of written notice shall be deemed to be completed,

When giving
of notice
deemed
completed

- (a) where notice is given by publication in a newspaper, on the day that such publication occurs;
- (b) where notice is given by personal service, on the day that the serving of all required notices is completed; and
- (c) where notice is given by mail, on the day that the mailing of all required notices is completed.

(4) Subsections 34 (22), (23), (24) and (25) of the said Act are repealed and the following substituted therefor:

(22) On an appeal to the Municipal Board, the Board shall hold a hearing of which notice shall be given to such persons or bodies and in such manner as the Board may determine.

Hearing and
notice
thereof

(5) Subsection 34 (28) of the said Act is amended by striking out "adversely" in the third line and in the eighth line.

15. The said Act is amended by adding thereto the following section:

34a.—(1) The authority to pass by-laws under subsections 34 (1) and 37 (1) does not include the authority to pass by-laws that distinguish between persons who are related and

No authority
to distinguish
on basis of
relationship

persons who are unrelated in respect of the occupancy of a building or structure.

Idem

(2) A provision in a by-law that distinguishes between persons who are related and persons who are unrelated in respect of the occupancy of a building or structure ceases to have effect on the day this section comes into force.

16. Subsection 35 (2) of the said Act is repealed and the following substituted therefor:

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the use of the holding symbol mentioned in subsection (1).

17. Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

Condition

(2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.

18. Clause 40 (8) (a) of the said Act is amended by adding thereto the following paragraph:

4. Where the land abuts a highway under the jurisdiction of the county or regional, metropolitan or district municipality, grading or alteration in elevation or contour of the land in relation to the elevation of the highway and provision for the disposal of storm and surface water from the land.

19. Subsection 41 (4) of the said Act is repealed and the following substituted therefor:

Official plan
requirement

(4) The alternative requirement authorized by subsection (3) may not be provided for in a by-law passed under this section unless there is an official plan in effect in the local municipality that contains specific policies dealing with the provision of lands for park or other public recreational purposes and the use of the alternative requirement.

20.—(1) Subsection 44 (10) of the said Act is amended by striking out “by mail” in the second line.

(2) Subsection 44 (12) of the said Act is amended by striking out “serving personally on or sending by registered mail to” in

the fourth and fifth lines and inserting in lieu thereof “filing with”.

(3) Subsection 44 (13) of the said Act is amended by striking out “served or sent to him” in the second line and inserting in lieu thereof “filed”.

21.—(1) Clause 46 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34, 37 or 38, but subsections 34 (12) to (31) do not apply to the exercise of such powers; and

(2) Subsection 46 (15) of the said Act is amended by striking out “adversely” in the fourth line.

22. Subsection 49 (1) of the said Act is amended by striking out “section 52 to the Minister or to a council, as the case may be, includes a delegate thereof as provided for in sections 4, 5 and 53” in the twenty-ninth, thirtieth and thirty-first lines and inserting in lieu thereof “subsections 52 (1), (2), (17), (18), (19), (21) and (22) to the Minister includes a delegate of the Minister, as provided for in sections 4 and 54, and a reference herein and in section 52 to a council includes a delegate of a council, as provided for in sections 5 and 53”.

23.—(1) Subsection 52 (7) of the said Act is amended by inserting after “sent” in the second line “either as required under subsection (5) or otherwise, including notice sent in accordance with a condition of delegation of the authority to grant consents”.

(2) Subsection 52 (20) of the said Act is amended by adding at the end thereof “but where there is an appeal under subsection (7) or (8), or a referral under subsection (13) or (14), the application for consent shall not be deemed to be refused for failure to fulfil the conditions until the expiry of a period of one year from the date of the order of the Municipal Board issued in respect of the appeal or referral”.

24. Subsection 56 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may by order, in respect of land described in the order, provide that the contravention of section 49 or a predecessor thereof or of a by-law passed under a predecessor

Effect of
contravention
of s. 49, etc.

of section 49 or of an order made under clause 27 (1) (b), as it existed on the 25th day of June, 1970, of *The Planning Act*, being chapter 296 of the Revised Statutes of Ontario, 1960, or a predecessor thereof does not have and shall be deemed never to have had the effect of preventing the conveyance of or creation of any interest in such land, provided that the order does not affect the rights acquired by any person from a judgment or order of any court given or made on or before the day on which the order is made by the Minister.

25. Subsections 68 (1) and (2) of the said Act are repealed and the following substituted therefor:

Tariff of fees

(1) The council of a municipality, by by-law, and a planning board, by resolution, may prescribe a tariff of fees for the processing of applications made in respect of planning matters, which tariff shall be designed to meet only the anticipated cost to the municipality or to a committee of adjustment or land division committee constituted by the council of the municipality or to the planning board in respect of the processing of each type of application provided for in the tariff.

Reduction or
waiver of
fees

(2) Notwithstanding that a tariff of fees is prescribed under subsection (1), the council of a municipality, a planning board, a committee of adjustment or a land division committee in processing an application may reduce the amount of or waive the requirement for the payment of a fee in respect of the application where the council, planning board or committee is satisfied that it would be unreasonable to require payment in accordance with the tariff.

26. Clause 69 (d) of the said Act is repealed.

Commence-
ment

27.—(1) This Act, except sections 3 and 4, subsection 5 (2) and section 14, comes into force on the day it receives Royal Assent.

Idem

(2) Section 3 shall be deemed to have come into force on the 1st day of August, 1983 but subsection 3 (6) of the *Planning Act, 1983*, as enacted by section 3 of this Act, does not apply so as to affect the rights acquired by any person from a judgment or order of any court given or made on or before the 4th day of May, 1988.

(3) Section 4, subsection 5 (2) and section 14 come into force ^{Idem} on a day to be named by proclamation of the Lieutenant Governor.

28. The short title of this Act is the *Planning Amendment* ^{Short title} *Act, 1989*.



Bill 129

An Act to regulate the Care of Animals kept for Exhibition or Entertainment

Mr. Philip
(*Etobicoke-Rexdale*)

1st Reading May 5th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill requires persons to acquire a licence to operate a garden, park or other establishment that keeps animals for the purpose of exhibition to or entertainment of the public. The Bill does not apply to circuses or pet shops.

Applicants for a licence are required to submit a detailed plan demonstrating how they propose to care for the animals and insuring that they have adequate financing to properly care for the animals.

The Bill sets out standards for providing and caring for animals.

The Bill provides for inspection of the premises of such establishments.

A person who contravenes a provision of the Act is subject to a fine or to confiscation of the person's animals or to both. In addition, the Minister may revoke a licence under specified circumstances.

Bill 129**1988****An Act to regulate the Care of Animals kept for
Exhibition or Entertainment**

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1. In this Act,

Definitions

“inspector” means an inspector appointed under section 8 of
this Act;

“licensee” means a person who is the holder of a licence
under this Act;

“Minister” means the Minister of Natural Resources;

“regulations” means the regulations made under this Act;

“zoo” means a garden, park or other establishment where ani-
mals are kept for the purpose of exhibition to or entertain-
ment of the public and does not include a circus or a pet
shop.

2. The Minister is responsible for the administration and
enforcement of this Act and the regulations.

Adminis-
tration of
Act

3.—(1) No person shall establish, operate or maintain a
zoo except under the authority of a licence issued by the Min-
ister under this Act.

Licence
required

(2) Subsection (1) does not apply to a person who was
operating and maintaining a zoo immediately before this Act
comes into force until three months after this Act comes into
force.

Transition

4.—(1) Subject to subsection (3), any person is entitled to
be issued a licence to establish, operate or maintain a zoo if
the person,

Issuance of
licence

- (a) applies for the licence in accordance with this Act and the regulations;
- (b) meets the requirements of this Act and the regulations; and
- (c) pays the prescribed fee.

Plan required

(2) An application shall include a detailed plan for adequately caring for the animals in the zoo.

Grounds for refusal

(3) The Minister may refuse to issue a licence where, in the Minister's opinion,

- (a) the proposed zoo or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law;
- (b) the plan referred to in subsection (2) is not adequate to care for the animals;
- (c) the applicant does not have the financial resources to adequately carry out the plan referred to in subsection (2);
- (d) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo will not be operated in accordance with the law and with honesty and integrity;
- (e) the applicant, or where the applicant is a corporation, its officers or directors, are not competent to operate a zoo in a responsible manner in accordance with this Act and the regulations; or
- (f) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo will be operated in a manner that is prejudicial to the health, safety or welfare of the animals or of the public.

Conditions

(4) The Minister may attach any conditions to a licence if he or she reasonably considers it advisable to do so to carry out the purposes of this Act.

Vary conditions

5. The Minister may vary any conditions of a licence if he or she believes on reasonable grounds that it is advisable to do so to carry out the purposes of this Act.

6. The Minister may revoke a licence where,Revocation
of licence

- (a) the licensee is in contravention of this Act or the regulations or any other Act or regulation or municipal by-law that applies to the zoo;
- (b) there is a breach of a condition of the licence;
- (c) the licensee has not followed the plan referred to in subsection 4 (2);
- (d) any person has made a false statement in the application for the licence or in any other information required to be furnished by this Act or the regulations;
- (e) the conduct of the licensee, or where the licensee is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo is not being or will not be operated in accordance with the law and with honesty and integrity;
- (f) the conduct of the licensee, or where the licensee is a corporation, its officers or directors, affords reasonable grounds for belief that the licensee is not competent to operate the zoo in a responsible manner in accordance with this Act and the regulations; or
- (g) the conduct of the licensee, or where the licensee is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo is being or will be operated in a manner that is prejudicial to the health, safety or welfare of the animals or of the public.

7.—(1) A person who operates and maintains a zoo shall ensure that each animal in the zoo receives, in accordance with the regulations, care appropriate to its individual needs and the specific needs of its species, including,

Standards of
care

- (a) an appropriate diet and appropriate amounts of drinking water;
- (b) the provision of appropriate space, privacy and contact with other animals;
- (c) an opportunity for the appropriate physical exercise;

- (d) the provision of a physical environment appropriate to its needs, whether at the licensee's premises or away from them; and
- (e) the provision of appropriate professional veterinary care.

Facilities for
veterinary
services

(2) A person who operates and maintains a zoo shall ensure that the zoo contains or has access to facilities for treating animals in need of veterinary services in accordance with the regulations.

Protection of
public,
employees

(3) A person who operates and maintains a zoo shall ensure in accordance with the regulations that there are barriers between the public and the animals that are adequate to protect the public and that the feeding and watering areas for the animals are adequate to protect the animals' caretakers.

Complaints
to be
investigated

(4) The Minister shall cause any complaint made concerning the operation of a zoo to be investigated within seven days of receipt of the complaint.

Appointment
of inspectors

8.—(1) The Minister may appoint such inspectors as are necessary for the purposes of this Act and the regulations and such appointments shall be in writing.

Certificate of
appointment

(2) The Minister shall issue to every inspector a certificate of appointment and every inspector, in the execution of his or her duties under this Act and the regulations, shall produce the certificate of appointment upon request.

Inspection

9.—(1) An inspector without a warrant at any time may enter upon the premises, including the business premises, of a zoo that is licensed under this Act to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

Idem

(2) Where an inspector believes on reasonable and probable grounds that any premises are being used as a zoo without being licensed, in contravention of this Act, the inspector without a warrant at any reasonable time may enter upon such premises to make an inspection for the purpose of determining whether or not the premises are being so used.

Warrant

(3) No inspector shall enter any room or place that is actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

Powers on
inspection

(4) Upon an inspection under this section, the inspector,

- (a) is entitled at any reasonable time to free access to all records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations;
- (b) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove any record referred to in clause (a) in order to make a copy of it, provided that the copying is carried out with reasonable dispatch and the record is promptly thereafter returned to the person whose premises are being inspected;
- (c) may inspect the premises and operations;
- (d) may examine or test samples of substances to ensure that this Act and the regulations are being complied with; and
- (e) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove a substance or a sample of a substance referred to in clause (d) in order to conduct further tests, for any purpose reasonably necessary to carry out effectively the purposes of this Act.

(5) No person shall obstruct an inspector or withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of an inspection.

Not to obstruct inspector

(6) Any copy made as provided in subsection (4) and purporting to be certified by an inspector is admissible in evidence in any prosecution as proof in the absence of evidence to the contrary of the original.

Admissibility of copies

(7) A certificate as to the result of any test that contains the name and a statement of the qualifications of the person who conducted the test and purports to be signed by that person is, without proof of the office or signature of that person, receivable in evidence as proof in the absence of evidence to the contrary of the facts stated in the certificate for all purposes in any prosecution if it has been served on any defendant to the prosecution within a reasonable time before the trial in which it is to be adduced.

Admissibility of test results

10.—(1) Any person who contravenes a provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 for a first offence and not more than \$5,000 for each subsequent offence.

Penalty

Idem,
corporation

(2) The minimum fine under subsection (1) for a corporation is \$5,000 for a first offence and \$25,000 for each subsequent offence.

Confiscate
animals

(3) The Minister may confiscate any animals of a person convicted of an offence under this section.

Regulations

11.—(1) The Lieutenant Governor in Council may make regulations,

- (a) respecting the information that is to be furnished in a plan under section 4;
- (b) governing the feeding and provision of drinking water to animals;
- (c) governing the space, privacy and contact with other animals to be provided;
- (d) governing the opportunity for physical exercise;
- (e) governing the provision of an appropriate physical environment for the animals;
- (f) governing facilities for treating animals;
- (g) governing barriers to protect the public and the protection of caretakers;
- (h) requiring periodic inspections of zoos by inspectors and specifying the period;
- (i) governing the reports that shall be made to the Minister by licensees;
- (j) providing for the issuing of licences and the fees payable for them;
- (k) exempting designated zoos from specified provisions of this Act or the regulations;
- (l) prescribing forms for the purposes of this Act and providing for their use.

Idem

(2) A regulation made under clauses (1) (b) to (g) may be general or specific in its application.

12. This Act comes into force on the day it receives Royal Assent. Commence-
ment

13. The short title of this Act is the *Zoo Licensing Act*, Short title
1988.





Bill 130

An Act to amend the Regional Municipality of Waterloo Act and the Education Act

The Hon. J. Eakins
Minister of Municipal Affairs

1st Reading May 9th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTIONS 1, 2, 3, 6, 7 and 8. The purposes of these sections are to provide for a uniform region-wide assessment update of all real property in the Regional Area on the same market value basis and alter the system of sharing regional and school board requirements among the supporting area municipalities.

The Regional Municipality of Waterloo will be required to establish each year one uniform residential and farm mill rate and one uniform commercial mill rate to apply throughout the Regional Area. Each of the three school boards operating within the Region will also establish uniform residential and farm and uniform commercial mill rates to apply within their particular area of jurisdiction. In order to accomplish this purpose, it is necessary to introduce complementary amendments to the *Education Act*.

The Bill will also require that the portion of payment in lieu of taxes and telephone and telegraph payments received by each area municipality that relates to the requirements of the Regional Municipality and the school boards shall be paid directly to those bodies.

The Bill will also require that the Ministry of Revenue conduct an update of the uniform assessment base at least every four years to reflect subsequent changes in market values.

SECTION 4. Section 169 is re-enacted and new sections 169a and 169b are added to provide regional council with expanded waste management powers to include,

- (a) exclusive authority over waste disposal;
- (b) the authority to assume responsibility for waste collection in an area municipality with the consent of the area municipality;
- (c) the authority to operate recycling programs by itself or in conjunction with the area municipalities;
- (d) the authority to prescribe regional routes and to approve local routes for the hauling of waste.

SECTION 5. A new section 178 is proposed which relates to industrial development charges that the Regional Municipality may levy on lands set out in the Schedule. The costs of the services provided would be recovered from the owner of those lands benefiting from the services.

Bill 130

1988

**An Act to amend the
Regional Municipality of Waterloo Act and the
Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 115 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

115. In this Part,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal or regional corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“public school board” means a public board as defined in paragraph 42a of subsection 1 (1) of the *Education Act*;

R.S.O. 1980,
c. 129

“rateable property” includes business and other assessment made under the *Assessment Act*;

R.S.O. 1980,
c. 31

“regional rating by-law” means a by-law passed under subsection 118 (2) or (3);

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”;

R.S.O. 1980,
c. 129

“separate school board” means a separate school board as defined in paragraph 59a of subsection 1 (1) of the *Education Act*;

“weighted assessment” means, for the relevant area, the total of,

- (a) the product obtained by multiplying the residential and farm assessment by 85 per cent, and
- (b) the commercial assessment.

2. Section 118 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 45, section 13, and sections 119, 120, 121 and 122 are repealed and the following substituted therefor:

Definitions

118.—(1) In this section,

“general regional levy” means a sum sufficient,

- (a) for payment of the estimated current annual expenditures as adopted under section 117, and
- (b) for payment of all debts of the Regional Corporation falling due within the year as well as amounts required to be raised for sinking funds and principal and interest payments or sinking fund requirements in respect of debenture debt of area municipalities for the payment of which the Regional Corporation is liable under this Act,

but excludes the special library levy;

“special library levy” means an amount required to be raised by two or more township area municipalities in any year for regional library purposes.

General
regional
rating by-law

(2) For purposes of raising the general regional levy, the Regional Council, on or before the 30th day of June in 1988 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each area municipality to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipal-

ity rateable for regional purposes and on the commercial assessment in the area municipality rateable for regional purposes.

(3) For purposes of raising a special library levy, the Regional Council, on or before the 30th day of June in 1988 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each applicable area municipality, to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipality rateable for regional purposes and on the commercial assessment in the area municipality rateable for regional purposes.

Special
library
levy

(4) The rate that the Regional Council shall direct to be levied in each year on commercial assessment for each separate levy specified in subsections (2) and (3) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

Determi-
nation
of
commercial
rate

(a) by the weighted assessment for all the area municipalities in the Regional Area, in the case of the general regional levy; and

(b) by the weighted assessment of those area municipalities that are rateable for the purpose of raising the special library levy, in the case of a special library levy.

(5) The rate that the Regional Council shall direct to be levied on the residential and farm assessment under subsections (2) and (3) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (4).

Determi-
nation
of residential
rate

(6) In each year the council of each area municipality shall levy, in accordance with the regional rating by-laws passed for that year, the rates specified in the by-law.

Area
municipality
to adopt
rates

(7) The assessment for real property that is exempt from taxation for regional purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining weighted assessment for the purposes of subsection (4).

Tax exempt
real property

(8) The full value of all rateable property shall be used in determining,

Full value
to be used

(a) the rates to be levied under subsections (4) and (5); and

- (b) the assessment on which the levy shall be made under subsection (6),

R.S.O. 1980, c. 31 and, notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

Instalment
and advance
payments

(9) A regional rating by-law shall specify the amount to be raised in an area municipality as a result of a levy being made in that area municipality in accordance with the by-law and the by-law,

- (a) may require specified portions of that amount to be paid to the treasurer of the Regional Corporation on or before specified dates; and
- (b) may provide that the Regional Corporation shall pay interest at a rate to be determined by the Regional Council on any payment required, or portion thereof, made in advance by any area municipality.

Payment

(10) The amount specified to be raised in an area municipality pursuant to a regional rating by-law shall be deemed to be taxes and is a debt of the area municipality to the Regional Corporation and the treasurer of the area municipality shall pay the amount owing by the area municipality to the treasurer of the Regional Corporation on or before the dates and in the portions specified in the regional rating by-law.

Default

(11) If an area municipality fails to make any payment, or portion thereof, as provided in the regional rating by-law, the area municipality shall pay to the Regional Corporation interest on the amount in default at the rate of 15 per cent per annum from the due date of the payment, or such lower rate as the Regional Council may by by-law determine, from the date payment is due until it is made.

Extension
of time

(12) The Minister by order may extend the time for passing a regional rating by-law in any year and such an order may be made notwithstanding that the time limits set out in subsection (2) or (3) have expired.

Alternative
basis of
apportionment
R.S.O. 1980,
c. 359

(13) Notwithstanding subsections (4) and (5), in each of the years 1988, 1989 and 1990, the Lieutenant Governor in Council may, in a regulation made under section 9a of the *Ontario Unconditional Grants Act*, prescribe an alternative basis on which apportionments are to be made and may prescribe the manner of determining the mill rates to be specified and determined under subsections (2) and (3).

(14) A basis of apportionment prescribed by the Lieutenant Governor in Council under subsection (13) shall be deemed to have been prescribed under subsection 9a (1) of the *Ontario Unconditional Grants Act* as an alternative to the basis of apportionment that would have been prescribed for the Regional Area under subsection 9a (1) if the Regional Area had not been subject to an assessment update under subsection 121 (1).

Deeming provision

R.S.O. 1980, c. 359

118a.—(1) In each year, The Huron-Perth Roman Catholic Separate School Board, The Waterloo County Board of Education and The Waterloo County Roman Catholic Separate School Board shall determine the rates to be levied by the applicable area municipalities to provide the sums required for elementary and secondary school purposes, as the case may be, in that year and shall specify the amount that is to be provided in that year by the application of those rates within an area municipality.

Determination of school rates

(2) The determinations required by subsection (1) shall be made in accordance with subsection 222 (1) of the *Education Act*.

Idem

R.S.O. 1980, c. 129

(3) On or before the 1st day of March in each year, The Huron-Perth Roman Catholic Separate School Board, The Waterloo County Board of Education and The Waterloo County Roman Catholic Separate School Board shall direct the council of each applicable area municipality to levy the rates determined by the particular Board in respect of that area municipality under subsection (1) and shall advise the area municipality of the amount of money to be raised by levying those rates.

Direction to area municipalities

(4) In each year the council of an area municipality shall levy rates, in accordance with the directions under subsection (3), upon all property in the area municipality rateable for public school board or separate school board purposes, as may be appropriate.

Area municipality to levy and collect

(5) The full value of all applicable rateable property shall be used in determining,

Full value to be used

- (a) the weighted assessment for each area municipality for purposes of apportioning among the applicable area municipalities the sums required for school purposes by the school boards mentioned in subsection (3);
- (b) the rates mentioned in subsection (1); and

R.S.O. 1980,
c. 129 (c) the assessment upon which the rates are to be levied under sections 128, 133 and 215 of the *Education Act*,

R.S.O. 1980,
c. 31 and notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

Definitions
in
R.S.O. 1980,
c. 129, s. 220 (6) For the purposes of determining and levying rates under this section, a reference in the *Education Act* to "commercial assessment" or "residential and farm assessment" shall be deemed to be a reference to such assessments as defined in this Part and not as defined in section 220 of that Act.

Non-
application of
R.S.O. 1980,
c. 129,
s. 219 (2) (7) Subsection 219 (2) of the *Education Act* does not apply to the determination of rates under subsection (1).

Application
of
R.S.O. 1980,
c. 129 (8) Except as provided in this section, the *Education Act* continues to apply to the levying of rates and collecting of taxes for each public school board and separate school board having jurisdiction in part of the Regional Area.

Definitions **118b.**—(1) In this section,

R.S.O. 1980,
c. 302 "area municipality levy" means the amount required for area municipality purposes under section 164 of the *Municipal Act* including the sums required for any board, commission or other body, but excluding those amounts required to be raised for regional and school purposes;

"special area municipality levy" means an amount to be raised by an area municipality that is not included in the area municipality levy, but excluding those amounts required to be raised for regional and school purposes.

Area
municipality
levies (2) The council of each area municipality, in each year in accordance with subsections (3) and (4), shall levy separate rates on the whole of the rateable commercial assessment and on the whole of the rateable residential and farm assessment in respect of the area municipality levy and the special area municipality levy.

Determi-
nation
of
commercial
rates (3) The rates to be levied in each year on commercial assessment for each separate levy specified in subsection (2) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

(a) by the weighted assessment for the area municipality, in the case of an area municipality levy; and

- (b) by the weighted assessment determined on the basis of the assessment that is rateable for the purpose of raising the special area municipality levy, in the case of a special area municipality levy.

(4) The rates to be levied in each year on residential and farm assessment for each separate levy specified in subsection (2) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (3).

Determi-
nation
of residential
rates

(5) Section 158 of the *Municipal Act* and section 7 of the *Ontario Unconditional Grants Act* do not apply to an area municipality.

Non-
application of
R.S.O. 1980,
c. 302, s. 158
and c. 359,
s. 7

(6) A reference in any other Act to a levy by a local municipality under section 158 of the *Municipal Act* shall, with respect to an area municipality, be deemed to be a reference to a levy under this section.

Area
municipality
levy
R.S.O. 1980,
c. 302

(7) The assessment for real property that is exempt from taxation for area municipality purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the weighted assessment for purposes of clause (3) (a) or (b).

Tax exempt
real property

118c.—(1) The Regional Council, before the adoption of the estimates for the year, may by by-law requisition from each area municipality a sum not exceeding 50 per cent of the amount that under subsection 118 (9) was, in the regional rating by-laws for the preceding year, specified to be raised in the particular area municipality and subsections 118 (9), (10) and (11) apply with necessary modifications to the amount requisitioned.

Interim
financing,
Regional
Council

(2) The amount of any requisition made under subsection (1) in any year upon an area municipality shall be deducted when determining the amount of the portions to be paid in that year by the area municipality to the treasurer of the Regional Corporation under the regional rating by-law authorized by clause 118 (9) (a).

Final
instalment
reduced

118d.—(1) The council of an area municipality may for any year, before the adoption of the estimates for the year, levy such rates as it may determine on the rateable commercial assessment and on the rateable residential and farm assessment in the area municipality.

Interim
financing,
area
municipalities

By-law in
December of
preceding
year

(2) A by-law for levying rates under subsection (1) shall be passed in the year that the rates are to be levied or may be passed in December of the preceding year if it provides that it does not come into force until a specified day in the following year.

Determi-
nation
of rate

(3) The rate that may be levied on any assessment under subsection (1) shall not exceed 50 per cent of the total of the rates that were levied or would have been levied on that assessment for all purposes in the preceding year.

Assessment
roll

(4) If the assessment roll for taxation in the current year has not been returned, the rate levied under subsection (1) may be levied on the assessment according to the assessment roll used for taxation purposes in the preceding year.

Interim levy
deducted
from
final levy

(5) The amount of any levy made on an assessment under subsection (1) shall be deducted from the total amount levied on that assessment for that year under sections 118, 118a and 118b.

Interim levy
in excess of
final levy

(6) Where the taxes levied on an assessment for real property or on a business assessment under this section exceed the taxes to be levied on that assessment for the year under sections 118, 118a and 118b, the treasurer of the area municipality shall, not later than twenty-one days following the giving of a notice of demand of taxes payable, refund to the person assessed that portion of the taxes paid in excess of the amount payable for the year pursuant to a levy made under sections 118, 118a and 118b.

Application
of
R.S.O. 1980,
c. 302

(7) The provisions of the *Municipal Act* with respect to the levy of rates and the collection of taxes apply with necessary modifications to the levy of rates and collection of taxes under this section.

Power of
Minister

118e. Where a direction has been made under subsection 121 (1) that a new assessment roll be returned for taxation in the current year, the Minister by order,

- (a) may prescribe the maximum sum that may be requisitioned from each area municipality under subsection 118c (1); and
- (b) may prescribe the maximum rates that may be levied by the council of each area municipality under subsection 118d (1).

Definitions

119.—(1) In this section,

“payment in lieu of taxes” means an amount that an area municipality is eligible to receive under,

- (a) subsection 26 (3), (4) or (5) of the *Assessment Act*, R.S.O. 1980, c. 31
- (b) subsection 7 (6) of the *Housing Development Act*, but not including that portion payable to a school board in accordance with subsection 7 (10) of that Act, R.S.O. 1980, c. 209
- (c) section 160 and subsection 160a (3) of the *Municipal Act*, R.S.O. 1980, c. 302
- (d) subsection 4 (1), (2) or (3) of the *Municipal Tax Assistance Act*, R.S.O. 1980, c. 311
- (e) section 42 of the *Ontario Water Resources Act*, R.S.O. 1980, c. 361
- (f) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act, R.S.O. 1980, c. 384
- (g) section 10 or 11 of the *Trees Act*, R.S.O. 1980, c. 510
- (h) the *Municipal Grants Act, 1980* (Canada), or 1980-81-82-83, c. 37 (Can.)
- (i) any Act of Ontario or of Canada or any agreement where the payment is from any government or government agency and is in lieu of taxes on real property or business assessment, but not including a payment referred to in section 498 of the *Municipal Act*; R.S.O. 1980, c. 302

“taxes for local purposes” means the taxes levied by an area municipality for local purposes under subsection 118b (2), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

R.S.O. 1980,
c. 31

“taxes for regional purposes” means the sum of taxes levied by an area municipality for regional purposes as specified in the regional rating by-laws under subsections 118 (2) and (3), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

“total taxes for all purposes” means the sum of the taxes for local purposes, the taxes for regional purposes and the taxes levied by the area municipality for school purposes under subsection 118a (1), excluding any adjustments under section 32 or 33 of the *Assessment Act*.

Area
municipalities
to share
payments in
lieu of taxes

(2) Where an area municipality is eligible to receive a payment in lieu of taxes for any year, it shall pay to the treasurer of the Regional Corporation a portion equal to the amount obtained by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for regional purposes for the year by the total of,

- (a) the taxes for local purposes for the year; and
- (b) the taxes for regional purposes for the year.

Sharing of
certain
payments

(3) Notwithstanding subsection (2), if an area municipality is eligible to receive a payment in lieu of taxes for any year under,

R.S.O. 1980,
c. 31

- (a) subsection 26 (3), (4) or (5) of the *Assessment Act*;

R.S.O. 1980,
c. 361

- (b) section 42 of the *Ontario Water Resources Act*;

R.S.O. 1980,
c. 384

- (c) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act;

R.S.O. 1980,
c. 510

- (d) section 10 or 11 of the *Trees Act*; or

1980-81-82-
83,
c. 37 (Can.)

- (e) the *Municipal Grants Act, 1980* (Canada),

and the calculation of the payment is based in part on the rates that were levied for school purposes, then the portion to be paid under subsection (2) shall be calculated by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for regional purposes for the year by the total taxes for all purposes for the year.

Treasurer
to provide
estimate
of share

(4) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the Regional Corporation and each school board showing an estimate of the amount that the area municipality will be required to pay to the Regional Corporation for the year under subsection (2) and to each school board under subsection 7 (10) of the *Housing Development Act* and under subsection 46 (9) of the *Power Corporation Act*.

R.S.O. 1980,
cc. 209, 384

Allocation
of payments
in lieu of
taxes

(5) Where an area municipality is required to pay a portion of a payment in lieu of taxes to the Regional Corporation under subsection (2), or to a school board,

- (a) subsections 26 (7) and (9) of the *Assessment Act*; R.S.O. 1980, c. 31
- (b) subsection 7 (10) of the *Housing Development Act*; R.S.O. 1980, c. 209
- (c) subsections 160 (12) and (16) and subsection 160a (4) of the *Municipal Act*; and R.S.O. 1980, c. 302
- (d) subsection 46 (7) of the *Power Corporation Act*, R.S.O. 1980, c. 384

with respect to the equalization of assessment or allocation and deposit of payments shall not apply to that entitlement.

120.—(1) Each area municipality shall pay a portion of the tax levied by it under subsections 161 (12) and (13) of the *Municipal Act* to the Regional Corporation and The Waterloo County Board of Education in the proportion that the taxes levied by it on commercial assessment in the year for each such body bears to the total taxes levied by it in the year on commercial assessment for all purposes, other than separate school board purposes. Payment of portion of telephone and telegraph tax

(2) In determining the taxes levied on commercial assessment under subsection (1), there shall be excluded any adjustments under section 32 or 33 of the *Assessment Act*. Exclusion of taxes added to collector's roll

(3) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the Regional Corporation and The Waterloo County Board of Education showing an estimate of the amount which the area municipality will be required to pay to that body for the year under subsection (1). Statement by treasurer

(4) Subsections 161 (18) to (24) of the *Municipal Act* do not apply if payments are made by an area municipality under subsection (1). Exclusion of R.S.O. 1980, c. 302, s. 161 (18-24)

120a.—(1) An amount payable by an area municipality to, Payment in lieu and telephone and telegraph levies

- (a) the Regional Corporation under subsection 119 (2) or 120 (1);
- (b) a public school board under subsection 120 (1); or
- (c) a school board under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act*, R.S.O. 1980, cc. 209, 384

is a debt of the area municipality to the Regional Corporation or school board, as the case may be, and, subject to sub-

sections (2) and (3), instalments are payable on account thereof as follows:

1. A first instalment equal to 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 31st day of March.
2. A second instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of June.
3. A third instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of September.
4. A fourth instalment of the balance of the entitlement for the year, on or before the 15th day of December.

Alternative
payment
schedule

(2) The Regional Council may by by-law provide for an alternative number of instalments and due dates for amounts payable by area municipalities to the Regional Corporation under subsection (1).

Idem

R.S.O. 1980,
c. 129

(3) Where a school board having jurisdiction within the Regional Area has established an agreement which applies to one or more area municipalities in accordance with subsection 215 (3) of the *Education Act*, the number of instalments and due dates specified in that agreement shall apply with necessary modifications to those amounts otherwise payable to the school board under subsection (1).

General
revenues

R.S.O. 1980,
cc. 209, 384

(4) An amount payable by an area municipality under subsection 119 (2) or 120 (1) or under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act* shall be credited by the Regional Corporation or school board to its general revenues.

Default

(5) If an area municipality fails to make any payment as provided under subsection (1) or as altered under subsection (2) or (3), the area municipality shall pay to the Regional Corporation or school board, as applicable, interest on the amount past due at the rate of 15 per cent per annum, or at such lower rate as the school board or Regional Corporation may by by-law determine from time to time.

Overpayment

(6) Where the total amount paid for the year under subsection (1), (2) or (3) exceeds the total amount payable for that purpose in the year, the area municipality shall notify the Regional Corporation or the school board, as the case may

be, of the amount of the overpayment and the Regional Corporation or school board shall forthwith pay that amount to the area municipality.

121.—(1) If the Minister of Revenue considers that, within any class or classes of real property within the Regional Area, any parcel or parcels of real property are assessed inequitably with respect to the assessment of any other parcel or parcels of real property of that class, the Minister of Revenue may direct that such changes be made in the assessment to be contained in the assessment roll next to be returned for each area municipality as will, in the Minister's opinion, eliminate or reduce inequalities in the assessment of any class or classes of real property, and the Minister of Revenue may, for that purpose, make regulations,

Region-wide
assessment
update

- (a) prescribing the classes of real property into which the real property in the Regional Area shall be divided for the purpose of this subsection;
- (b) prescribing standards and procedures to be used for the purpose of equalizing and making equitable the assessments of all real property belonging to the same class throughout the Regional Area;
- (c) providing that any equalization of assessment pursuant to a regulation made under clause (b) shall not alter, as between classes of real property throughout the Regional Area, the relative level of assessment at market value previously existing among such classes, or providing that the equalization shall alter such levels of assessment at market value no more than is reasonably necessary to provide equitability of assessment within each class.

(2) If the assessment roll of an area municipality for taxation in any year is changed pursuant to a direction of the Minister of Revenue under subsection (1),

Application
of
new
assessment
roll

- (a) the assessment roll to be returned for that area municipality for taxation in that year shall be the assessment roll as so changed and not the assessment roll that would otherwise have been returned; and
- (b) the assessment roll to be returned in each year following that year shall be the assessment roll returned under clause (a) as amended, added to, or otherwise altered under the *Assessment Act* up to

R.S.O. 1980,
c. 31

the date when the assessment roll is returned in each such following year.

Exception

(3) Notwithstanding subsection (2), where the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

Status of
assessment
roll

(4) For the purpose of every Act, the assessment roll of an area municipality returned under subsection (2) shall be deemed to be the assessment roll of the area municipality returned under the *Assessment Act*.

R.S.O. 1980,
c. 31

Mandatory
return of
updated roll
every fourth
year

(5) In every fourth year following the most recent direction under subsection (1), the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Resolution
required

(6) The Minister of Revenue shall not make a direction under subsection (1) unless the Regional Council by resolution has requested that a direction be made, but a resolution is not required where a direction of the Minister of Revenue is made as required under subsection (5).

Provisions of
R.S.O. 1980,
c. 31

(7) Except as provided in subsections (1) and (8), the *Assessment Act* and the alterations, corrections, additions and amendments authorized by that Act apply to an assessment roll returned under subsection (2).

Idem

(8) Subsections 63 (1) and (3) and sections 64 and 65 of the *Assessment Act* do not apply to an area municipality or to the assessment roll of any area municipality in respect of 1988 and subsequent years.

Powers on
appeal

(9) The Assessment Review Board, the Ontario Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Board, Ontario Municipal Board or court is satisfied that the assessment is inequitable with respect to the assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.

(10) Notwithstanding that a complaint, appeal, proceeding or action concerns an assessment made for taxation in a year prior to the year for which classes of real property were prescribed for the Regional Area under subsection (1), for the purpose of determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, real property described in a class prescribed under subsection (1) for the Regional Area is not similar to real property described in another class prescribed under subsection (1) for the Regional Area, and the inclusion of real property within a class so prescribed does not indicate that the real property is similar to other real property in that class.

Where property described in class prescribed under subs. (1)

(11) No amendment shall be made to the assessment or a collector's roll under clause 33 (a) of the *Assessment Act* until the cumulative value of the increase since the date of the most recent change to the assessment roll under a direction of the Minister of Revenue under subsection (1) is at least in the sum of \$5,000 at market value or, if the assessment in the Regional Area is at less than market value, at an equivalent rate.

No amendment to collector's roll
R.S.O. 1980, c. 31

(12) For the purposes of subsection 24 (16a) of the *Assessment Act*, changes made in the assessment roll of an area municipality under a direction of the Minister of Revenue under subsection (1) shall be deemed to be an update of the assessment of all property within the area municipality under subsection 63 (3) of the *Assessment Act*.

Table of rates for pipe lines

(13) Nothing in section 118, 118a or 118b deprives any person of any right of appeal provided for in the *Assessment Act* or affects the operation of subsection 36 (6) of that Act.

Rights of appeal preserved

(14) A regulation made under subsection (1) may be made retroactive to the 1st day of December of the year preceding the year in which it was made.

Regulations may be retroactive

122.—(1) Where changes are made in the assessment rolls of area municipalities under a direction of the Minister of Revenue under subsection 121 (1) and the changes directly affect the relative cost sharing of conservation authority responsibilities for any municipality beyond the Regional Area or cause within the Regional Area substantial tax shifts between municipalities, property classes or individual properties, the Lieutenant Governor in Council may, in order to minimize such effects, make regulations prescribing an alternative basis of apportionment to that specified under the *Conservation Authorities Act*.

Conservation Authority apportionments

R.S.O. 1980, c. 85

Regulation
may be
retroactive

(2) A regulation made under subsection (1) may be made retroactive to a date not earlier than the 1st day of January of the year in which it was made.

3. Subsection 163 (5) of the said Act is repealed and the following substituted therefor:

Operation of
regional
library
service

(5) The operation of the regional library service shall be limited to the township area municipalities.

4. Section 169 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 49, section 29, is repealed and the following substituted therefor:

Definition

169.—(1) In this Part, “waste” means ashes, garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other wastes as may be designated by by-law passed by the Regional Council.

Disposal
of waste

(2) The Regional Corporation shall provide facilities for the purposes of receiving, dumping and disposing of waste, and no area municipality shall provide such facilities.

Designation
of facilities

(3) The Regional Council shall, for each area municipality, designate one or more facilities for the receiving, dumping and disposing of waste or any class or classes thereof and, where such a designation has been made, an area municipality shall not utilize any facilities except the facilities that have been so designated for that area municipality.

Consent of
Regional
Council
required
R.S.O. 1980,
c. 303

(4) No facilities for the receiving, dumping and disposing of waste shall be provided in the Regional Area by any person or by any municipality, as defined in the *Municipal Affairs Act*, or by any other regional municipality or by a metropolitan or district municipality or by the County of Oxford or by a local board of a regional, district or metropolitan municipality or of the County of Oxford without the consent of the Regional Council, which consent may be given upon such terms and conditions, including the payment of compensation, as may be agreed upon.

Where
consent
refused

(5) Where the Regional Council refuses its consent under subsection (4) or the applicant and the Regional Council fail to agree on the terms and conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter, and may impose such terms and conditions as the Board considers appropriate and the decision of the Board is final.

(6) For the purposes of subsection (2), the Regional Corporation may,

Powers
respecting
disposal
of waste

- (a) acquire and use land;
- (b) erect, maintain and operate buildings, structures, machinery or equipment for the purposes of receiving, dumping and disposing of waste;
- (c) contract with any person for such purposes;
- (d) prohibit or regulate the dumping and disposing of waste or any class or classes thereof upon any such land;
- (e) prescribe rates or charges for the use of waste facilities, which rates or charges may relate to the volume, weight or class of waste, or otherwise as the Regional Council considers appropriate in the circumstances; and
- (f) provide standards and regulations for vehicles, or any class or classes thereof, used for the haulage of waste to any waste facility located in the Regional Area.

(7) The Regional Corporation shall pay to the corporation of any area municipality on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of such area municipality in respect of any municipal facility for the receiving, dumping and disposing of waste assumed by the Regional Corporation.

Payment
to area
municipality

(8) If the Regional Corporation fails to make any payment required under subsection (7), on or before the due date, the area municipality may charge the Regional Corporation interest at the rate of 15 per cent per annum, or such lower rate as the council of the area municipality determines, from such date until payment is made.

Interest

(9) For the purposes of subsection (6), paragraph 84 of section 210 of the *Municipal Act* applies with necessary modifications.

Application
of certain
provisions of
R.S.O. 1980,
c. 302

(10) A by-law passed under paragraph 129 of section 210 of the *Municipal Act* does not apply to the Regional Corporation.

Non-
applicability
of certain
by-laws

(11) The Regional Council may by by-law prescribe one or more routes on specified regional roads to be used by

Restrictions
respecting
the hauling
of wastes

vehicles, or any class or classes thereof, in hauling waste to any waste facility located in the Regional Area, and any such by-law may provide different restrictions by reference to the days and times set forth in the by-law.

Idem

(12) Subject to the approval of the Regional Council, the council of an area municipality may by by-law prescribe one or more routes on specified area municipality roads to be used by vehicles, or any class or classes thereof, in hauling waste to any waste facility located in such area municipality, and any such by-law may provide different restrictions by reference to the days and times set forth in the by-law.

Conversion
of waste

(13) The Regional Corporation may erect, maintain and operate buildings, structures, machinery or equipment for the purposes of recovering, manufacturing, producing, supplying, selling or distributing from domestic or industrial sewage or waste any product, resource, commodity, electrical power or energy, hot water or steam, and for such purposes may,

- (a) enter into agreements with any person;
- (b) carry on investigations, experiments, research or development;
- (c) construct and maintain pipes, apparatus and equipment on, over, under or across any highway or any other land with the consent of the owner of such land; and
- (d) acquire any patent or licence or any interest in any patent or licence, or dispose of any patent or licence by sale or otherwise.

Interpretation

(14) In subsection (13), "product" includes fuel derived from waste.

Non-
applicability
of
R.S.O. 1980,
c. 309

(15) The *Municipal Franchises Act* does not apply to any act of the Regional Corporation under subsection (13).

Collection
and removal
of
waste in area
municipality

169a.—(1) The Regional Council may, with the consent of an area municipality, assume the responsibility for the collection and removal of waste for that area municipality or for one or more defined areas therein.

Consent
required for
repeal of
regional
by-law

(2) A by-law passed by Regional Council under subsection (1) shall not be repealed without the consent of the area municipality which consented to the passing of the by-law.

(3) On and after the effective day of a by-law passed under subsection (1),

Where
Regional
Corporation
responsible
for
collection of
waste in area
municipality

- (a) the Regional Corporation shall be responsible for the collection and removal of waste in the area municipality or defined areas therein to which the by-law applies;
- (b) for the purposes of clause (a), the Regional Corporation has all the powers conferred by any general or special Act upon the area municipality or local board thereof for the collection and removal of waste;
- (c) no area municipality shall collect or remove waste in the area municipality or defined areas therein to which the by-law applies without the consent of the Regional Council, which consent may be given upon such terms and conditions, including the payment of compensation, as may be agreed upon;
- (d) all rights and obligations and all personal property of the area municipality pertaining to or exclusively used for the collection and removal of waste in the area municipality or defined areas therein to which the by-law applies are vested in the Regional Corporation without compensation;
- (e) subsections 169 (7) and (8) apply with necessary modifications to outstanding debts in respect of the property vested in the Regional Corporation under clause (d); and
- (f) where, prior to the effective date of the by-law, the area municipality had entered into an agreement for another municipality or person to collect and remove waste in the area municipality or defined area therein to which the by-law applies, the Regional Corporation shall be bound by the agreement, and the area municipality is relieved of all liability under the agreement.

(4) The Regional Council shall offer to employ every person who on the effective date of the by-law passed under subsection (1) is employed by the area municipality in the collection and removal of waste in the area municipality or defined area therein to which the by-law applies.

Offer of
employment
to be made

(5) Any person who accepts employment under subsection (4) is entitled to receive a wage or salary for the one year

Salary to be
paid in
first year

period following such acceptance of not less than that person was receiving on the date the by-law was passed.

Application
of certain
provisions

(6) Subsections 24 (2), (3), (5), (10), (11) and (13) apply with necessary modifications to a person who accepts employment with the Regional Corporation under subsection (4).

Costs may be
recovered
from area
municipality

(7) The Regional Council may by by-law provide for imposing on and collecting from an area municipality in which or in defined areas of which it collects and removes waste, a waste collection rate sufficient to pay the whole or such portion as the by-law may specify of the regional capital costs including debentures charges and expenditures for maintenance and operation of the waste collection and removal system in the area municipality and such rate may be based on the volume, weight or class of waste collected and removed or on any other basis that the by-law may specify.

Idem

(8) All rates under subsection (7) constitute a debt of the area municipality to the Regional Corporation and shall be payable at such times and in such amounts as may be specified by by-law of the Regional Council.

Payment
by area
municipality

(9) The area municipality may,

(a) pay the whole or part of the amount chargeable to it under this section out of its general funds;

R.S.O. 1980,
c. 302

(b) pass by-laws under paragraphs 85 and 86 of section 210 of the *Municipal Act* for imposing rates to recover the whole or part of the amount chargeable to the area municipality; and

(c) pass by-laws for imposing rates to recover the whole or part of the amount chargeable as part of the cost of an urban service within an urban service area established in the area municipality under any general or special Act.

Recycling
programs

169b.—(1) The Regional Corporation may establish and operate programs for the reduction, recovery, recycling and reuse of waste and the Regional Corporation may enter into agreements with one or more area municipalities to provide for the joint management and operation of the programs upon such terms and conditions as may be agreed upon.

Agreements

(2) An agreement under subsection (1) may provide that the Regional Corporation shall be responsible for the collection and marketing of waste separated by the public at source for recycling or reuse.

5. The said Act is amended by adding thereto the following section:

178.—(1) In this section,

Definitions

“development” means development as defined in subsection 40 (1) of the *Planning Act*, 1983;

1983, c. 1

“industrial development charge” means a uniform charge per hectare based on the total area of the land and all or any part of the net cost of providing the services;

“land” means the land described in the Schedule to subsection (2);

“net cost of providing the services” means the total cost to the Regional Corporation of providing the services after deducting all grants, subsidies or payments and any other moneys from any source which have been or will be received in respect of or applied against the cost of providing the services;

“services” means the undertakings and works prescribed by the Minister.

(2) The Regional Corporation may, in respect of any commercial or industrial development on all or any portion of the land described in the following Schedule, impose on and collect from the registered owners of all or any portion of the land being so developed an industrial development charge to defray all or any part of the net cost of providing the services:

Industrial
development
charge

SCHEDULE

The land located in the following areas:

1. The portion of the City of Cambridge described as follows:

Beginning at the intersection of the northwesterly limit of the King's Highway No. 401 and the northeasterly limit of the right of way of the Grand River Railway;

Thence northwesterly along the Grand River Railway to a westerly boundary of the City of Cambridge;

Thence southerly along the said westerly boundary to the northerly limit of the King's Highway No. 401;

Thence easterly along the northerly limit of the said Highway to the place of beginning.

2. The portion of the City of Kitchener described as follows:

Beginning at the intersection of the easterly boundary of the City of Kitchener and the northerly limit of the King's Highway No. 401;

Thence westerly along the northerly limit of the King's Highway No. 401 to the northeasterly limit of the King's Highway No. 8 (Old);

Thence northwesterly along the said northeasterly limit to the southwesterly limit of the King's Highway No. 8 (New);

Thence southeasterly along the southwesterly limit of the said King's Highway No. 8 (New) to the easterly boundary of the City of Kitchener;

Thence southerly along the said easterly boundary to the place of beginning.

Charge constitutes debt of registered owner

(3) An industrial development charge imposed under subsection (2) constitutes a debt of the registered owner to the Regional Corporation and may be recovered in a court of competent jurisdiction.

Payment of charge necessary before building permit issued

(4) An industrial development charge imposed under subsection (2) shall be paid before the issuance of any building permit required for the development.

Deeming provision R.S.O. 1980, c. 51

(5) Subsection (4) shall be deemed to be "applicable law" for the purposes of clause 6 (1) (a) of the *Building Code Act*.

Disputes referred to Municipal Board

(6) If the registered owner of the land upon which an industrial development charge has been imposed under subsection (2) disputes the amount of the charge, the registered owner, at any time prior to paying the charge to the Regional Corporation, may apply to the Municipal Board by written notice to the secretary of the Board and to the Regional Corporation, and the Board shall hear and determine the matter.

Reduction of industrial development charge 1983, c. 1

(7) Subject to subsection (8), the amount of any development or lot charge imposed on the land by the Regional Corporation under section 50 of the *Planning Act, 1983* shall be reduced by the amount of the industrial development charge imposed and collected on the same land under this section.

Idem

(8) The amount of the reduction in the charge imposed under section 50 of the *Planning Act, 1983* arising out of the imposition of the industrial development charge shall not exceed the amount of the charge imposed under section 50 of the *Planning Act, 1983*.

Order of Minister

(9) The Minister may by order prescribe the undertakings and works to which this section applies.

(10) The services shall be deemed to be provided to and utilized by any commercial or industrial development of all or any portion of the land.

Deeming
provision

6. Nothing in this Act affects the validity of an interim levy made by the Regional Council or by the council of an area municipality under section 120 of the *Regional Municipality of Waterloo Act* as it existed before the coming into force of this Act, and subsections 118 (9), (10) and (11) and subsection 118c (2) of that Act, as enacted by this Act, apply with necessary modifications to the interim levy made by the Regional Council in 1988 and subsections 118d (4), (5) and (6) of that Act, as enacted by this Act, apply with necessary modifications to an interim levy made by an area municipality in 1988.

Transition

R.S.O. 1980,
c. 442

7. Notwithstanding subsection 164 (2) of the *Municipal Act* or subsection 216 (2) of the *Education Act*, where the amount levied by an area municipality for regional purposes or school purposes in 1987 differs from the sum the area municipality ought to have levied for regional purposes or school purposes, the area municipality shall debit or credit such deficit or surplus, as applicable, to the general funds of the municipality and not revise the rates to be levied for such body in 1988.

Transition

R.S.O. 1980,
cc. 302, 129

8.—(1) Subsection 130 (10) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

(10) This section does not apply to The Haldimand-Norfolk Roman Catholic Separate School Board, The Sudbury District Roman Catholic Separate School Board, The Waterloo County Roman Catholic Separate School Board or to a separate school board having jurisdiction wholly or partly in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

Non-
application

R.S.O. 1980,
c. 302

(2) Subsection 214 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

(6) Subsections (3) and (5) do not apply to an area municipality in The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

Non-
application

R.S.O. 1980,
c. 302

(3) Clause 214b (2) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

(b) The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo.

(4) Subsection 222 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

Non-application

(4) Subsection (2) does not apply to an area municipality in The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

R.S.O. 1980,
c. 302

(5) Section 225 of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

Conflict

225. In the event of a conflict between any provision in sections 220 to 224 and any provision in any other Act, other than the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act*, the *Regional Municipality of Waterloo Act* and section 368d of the *Municipal Act*, the provisions in sections 220 to 224 prevail.

R.S.O. 1980,
cc. 435, 441,
442, 302

Commence-
ment

9.—(1) This Act, except sections 4 and 5, shall be deemed to have come into force on the 1st day of January, 1988.

Idem

(2) Sections 4 and 5 come into force on the day this Act receives Royal Assent.

Short title

10. The short title of this Act is the *Regional Municipality of Waterloo Statute Law Amendment Act, 1988*.



Bill 130

*(Chapter 23
Statutes of Ontario, 1988)*

An Act to amend the Regional Municipality of Waterloo Act and the Education Act

The Hon. J. Eakins
Minister of Municipal Affairs

<i>1st Reading</i>	May 9th, 1988
<i>2nd Reading</i>	May 17th, 1988
<i>3rd Reading</i>	May 18th, 1988
<i>Royal Assent</i>	May 24th, 1988



Bill 130

1988

**An Act to amend the
Regional Municipality of Waterloo Act and the
Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 115 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

115. In this Part,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal or regional corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“public school board” means a public board as defined in paragraph 42a of subsection 1 (1) of the *Education Act*;

R.S.O. 1980,
c. 129

“rateable property” includes business and other assessment made under the *Assessment Act*;

R.S.O. 1980,
c. 31

“regional rating by-law” means a by-law passed under subsection 118 (2) or (3);

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”;

R.S.O. 1980,
c. 129

“separate school board” means a separate school board as defined in paragraph 59a of subsection 1 (1) of the *Education Act*;

“weighted assessment” means, for the relevant area, the total of,

- (a) the product obtained by multiplying the residential and farm assessment by 85 per cent, and
- (b) the commercial assessment.

2. Section 118 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 45, section 13, and sections 119, 120, 121 and 122 are repealed and the following substituted therefor:

Definitions

118.—(1) In this section,

“general regional levy” means a sum sufficient,

- (a) for payment of the estimated current annual expenditures as adopted under section 117, and
- (b) for payment of all debts of the Regional Corporation falling due within the year as well as amounts required to be raised for sinking funds and principal and interest payments or sinking fund requirements in respect of debenture debt of area municipalities for the payment of which the Regional Corporation is liable under this Act,

but excludes the special library levy;

“special library levy” means an amount required to be raised by two or more township area municipalities in any year for regional library purposes.

General
regional
rating by-law

(2) For purposes of raising the general regional levy, the Regional Council, on or before the 30th day of June in 1988 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each area municipality to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipal-

ity rateable for regional purposes and on the commercial assessment in the area municipality rateable for regional purposes.

(3) For purposes of raising a special library levy, the Regional Council, on or before the 30th day of June in 1988 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each applicable area municipality, to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipality rateable for regional purposes and on the commercial assessment in the area municipality rateable for regional purposes.

Special
library
levy

(4) The rate that the Regional Council shall direct to be levied in each year on commercial assessment for each separate levy specified in subsections (2) and (3) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

Determi-
nation
of
commercial
rate

(a) by the weighted assessment for all the area municipalities in the Regional Area, in the case of the general regional levy; and

(b) by the weighted assessment of those area municipalities that are rateable for the purpose of raising the special library levy, in the case of a special library levy.

(5) The rate that the Regional Council shall direct to be levied on the residential and farm assessment under subsections (2) and (3) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (4).

Determi-
nation
of residential
rate

(6) In each year the council of each area municipality shall levy, in accordance with the regional rating by-laws passed for that year, the rates specified in the by-law.

Area
municipality
to adopt
rates

(7) The assessment for real property that is exempt from taxation for regional purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining weighted assessment for the purposes of subsection (4).

Tax exempt
real property

(8) The full value of all rateable property shall be used in determining,

Full value
to be used

(a) the rates to be levied under subsections (4) and (5); and

- (b) the assessment on which the levy shall be made under subsection (6),

R.S.O. 1980,
c. 31

and, notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

Instalment
and advance
payments

(9) A regional rating by-law shall specify the amount to be raised in an area municipality as a result of a levy being made in that area municipality in accordance with the by-law and the by-law,

- (a) may require specified portions of that amount to be paid to the treasurer of the Regional Corporation on or before specified dates; and
- (b) may provide that the Regional Corporation shall pay interest at a rate to be determined by the Regional Council on any payment required, or portion thereof, made in advance by any area municipality.

Payment

(10) The amount specified to be raised in an area municipality pursuant to a regional rating by-law shall be deemed to be taxes and is a debt of the area municipality to the Regional Corporation and the treasurer of the area municipality shall pay the amount owing by the area municipality to the treasurer of the Regional Corporation on or before the dates and in the portions specified in the regional rating by-law.

Default

(11) If an area municipality fails to make any payment, or portion thereof, as provided in the regional rating by-law, the area municipality shall pay to the Regional Corporation interest on the amount in default at the rate of 15 per cent per annum from the due date of the payment, or such lower rate as the Regional Council may by by-law determine, from the date payment is due until it is made.

Extension
of time

(12) The Minister by order may extend the time for passing a regional rating by-law, in any year and such an order may be made notwithstanding that the time limits set out in subsection (2) or (3) have expired.

Alternative
basis of
apportionment
R.S.O. 1980,
c. 359

(13) Notwithstanding subsections (4) and (5), in each of the years 1988, 1989 and 1990, the Lieutenant Governor in Council may, in a regulation made under section 9a of the *Ontario Unconditional Grants Act*, prescribe an alternative basis on which apportionments are to be made and may prescribe the manner of determining the mill rates to be specified and determined under subsections (2) and (3).

(14) A basis of apportionment prescribed by the Lieutenant Governor in Council under subsection (13) shall be deemed to have been prescribed under subsection 9a (1) of the *Ontario Unconditional Grants Act* as an alternative to the basis of apportionment that would have been prescribed for the Regional Area under subsection 9a (1) if the Regional Area had not been subject to an assessment update under subsection 121 (1).

Deeming
provision
R.S.O. 1980,
c. 359

118a.—(1) In each year, The Huron-Perth Roman Catholic Separate School Board, The Waterloo County Board of Education and The Waterloo County Roman Catholic Separate School Board shall determine the rates to be levied by the applicable area municipalities to provide the sums required for elementary and secondary school purposes, as the case may be, in that year and shall specify the amount that is to be provided in that year by the application of those rates within an area municipality.

Determi-
nation
of school
rates

(2) The determinations required by subsection (1) shall be made in accordance with subsection 222 (1) of the *Education Act*.

Idem
R.S.O. 1980,
c. 129

(3) On or before the 1st day of March in each year, The Huron-Perth Roman Catholic Separate School Board, The Waterloo County Board of Education and The Waterloo County Roman Catholic Separate School Board shall direct the council of each applicable area municipality to levy the rates determined by the particular Board in respect of that area municipality under subsection (1) and shall advise the area municipality of the amount of money to be raised by levying those rates.

Direction
to area
municipalities

(4) In each year the council of an area municipality shall levy rates, in accordance with the directions under subsection (3), upon all property in the area municipality rateable for public school board or separate school board purposes, as may be appropriate.

Area
municipality
to levy
and collect

(5) The full value of all applicable rateable property shall be used in determining,

Full value
to be used

(a) the weighted assessment for each area municipality for purposes of apportioning among the applicable area municipalities the sums required for school purposes by the school boards mentioned in subsection (3);

(b) the rates mentioned in subsection (1); and

R.S.O. 1980,
c. 129 (c) the assessment upon which the rates are to be levied under sections 128, 133 and 215 of the *Education Act*,

R.S.O. 1980,
c. 31 and notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

Definitions
in
R.S.O. 1980,
c. 129, s. 220 (6) For the purposes of determining and levying rates under this section, a reference in the *Education Act* to "commercial assessment" or "residential and farm assessment" shall be deemed to be a reference to such assessments as defined in this Part and not as defined in section 220 of that Act.

Non-
application of
R.S.O. 1980,
c. 129,
s. 219 (2) (7) Subsection 219 (2) of the *Education Act* does not apply to the determination of rates under subsection (1).

Application
of
R.S.O. 1980,
c. 129 (8) Except as provided in this section, the *Education Act* continues to apply to the levying of rates and collecting of taxes for each public school board and separate school board having jurisdiction in part of the Regional Area.

Definitions **118b.**—(1) In this section,

R.S.O. 1980,
c. 302 "area municipality levy" means the amount required for area municipality purposes under section 164 of the *Municipal Act* including the sums required for any board, commission or other body, but excluding those amounts required to be raised for regional and school purposes;

"special area municipality levy" means an amount to be raised by an area municipality that is not included in the area municipality levy, but excluding those amounts required to be raised for regional and school purposes.

Area
municipality
levies (2) The council of each area municipality, in each year in accordance with subsections (3) and (4), shall levy separate rates on the whole of the rateable commercial assessment and on the whole of the rateable residential and farm assessment in respect of the area municipality levy and the special area municipality levy.

Determi-
nation
of
commercial
rates (3) The rates to be levied in each year on commercial assessment for each separate levy specified in subsection (2) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

(a) by the weighted assessment for the area municipality, in the case of an area municipality levy; and

- (b) by the weighted assessment determined on the basis of the assessment that is rateable for the purpose of raising the special area municipality levy, in the case of a special area municipality levy.

(4) The rates to be levied in each year on residential and farm assessment for each separate levy specified in subsection (2) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (3).

Determination of residential rates

(5) Section 158 of the *Municipal Act* and section 7 of the *Ontario Unconditional Grants Act* do not apply to an area municipality.

Non-application of R.S.O. 1980, c. 302, s. 158 and c. 359, s. 7

(6) A reference in any other Act to a levy by a local municipality under section 158 of the *Municipal Act* shall, with respect to an area municipality, be deemed to be a reference to a levy under this section.

Area municipality levy
R.S.O. 1980, c. 302

(7) The assessment for real property that is exempt from taxation for area municipality purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the weighted assessment for purposes of clause (3) (a) or (b).

Tax exempt real property

118c.—(1) The Regional Council, before the adoption of the estimates for the year, may by by-law requisition from each area municipality a sum not exceeding 50 per cent of the amount that under subsection 118 (9) was, in the regional rating by-laws for the preceding year, specified to be raised in the particular area municipality and subsections 118 (9), (10) and (11) apply with necessary modifications to the amount requisitioned.

Interim financing, Regional Council

(2) The amount of any requisition made under subsection (1) in any year upon an area municipality shall be deducted when determining the amount of the portions to be paid in that year by the area municipality to the treasurer of the Regional Corporation under the regional rating by-law authorized by clause 118 (9) (a).

Final instalment reduced

118d.—(1) The council of an area municipality may for any year, before the adoption of the estimates for the year, levy such rates as it may determine on the rateable commercial assessment and on the rateable residential and farm assessment in the area municipality.

Interim financing, area municipalities

By-law in
December of
preceding
year

(2) A by-law for levying rates under subsection (1) shall be passed in the year that the rates are to be levied or may be passed in December of the preceding year if it provides that it does not come into force until a specified day in the following year.

Determi-
nation
of rate

(3) The rate that may be levied on any assessment under subsection (1) shall not exceed 50 per cent of the total of the rates that were levied or would have been levied on that assessment for all purposes in the preceding year.

Assessment
roll

(4) If the assessment roll for taxation in the current year has not been returned, the rate levied under subsection (1) may be levied on the assessment according to the assessment roll used for taxation purposes in the preceding year.

Interim levy
deducted
from
final levy

(5) The amount of any levy made on an assessment under subsection (1) shall be deducted from the total amount levied on that assessment for that year under sections 118, 118a and 118b.

Interim levy
in excess of
final levy

(6) Where the taxes levied on an assessment for real property or on a business assessment under this section exceed the taxes to be levied on that assessment for the year under sections 118, 118a and 118b, the treasurer of the area municipality shall, not later than twenty-one days following the giving of a notice of demand of taxes payable, refund to the person assessed that portion of the taxes paid in excess of the amount payable for the year pursuant to a levy made under sections 118, 118a and 118b.

Application
of
R.S.O. 1980,
c. 302

(7) The provisions of the *Municipal Act* with respect to the levy of rates and the collection of taxes apply with necessary modifications to the levy of rates and collection of taxes under this section.

Power of
Minister

118e. Where a direction has been made under subsection 121 (1) that a new assessment roll be returned for taxation in the current year, the Minister by order,

- (a) may prescribe the maximum sum that may be requisitioned from each area municipality under subsection 118c (1); and
- (b) may prescribe the maximum rates that may be levied by the council of each area municipality under subsection 118d (1).

Definitions

119.—(1) In this section,

“payment in lieu of taxes” means an amount that an area municipality is eligible to receive under,

- (a) subsection 26 (3), (4) or (5) of the *Assessment Act*, R.S.O. 1980, c. 31
- (b) subsection 7 (6) of the *Housing Development Act*, but not including that portion payable to a school board in accordance with subsection 7 (10) of that Act, R.S.O. 1980, c. 209
- (c) section 160 and subsection 160a (3) of the *Municipal Act*, R.S.O. 1980, c. 302
- (d) subsection 4 (1), (2) or (3) of the *Municipal Tax Assistance Act*, R.S.O. 1980, c. 311
- (e) section 42 of the *Ontario Water Resources Act*, R.S.O. 1980, c. 361
- (f) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act, R.S.O. 1980, c. 384
- (g) section 10 or 11 of the *Trees Act*, R.S.O. 1980, c. 510
- (h) the *Municipal Grants Act, 1980* (Canada), or 1980-81-82-83, c. 37 (Can.)
- (i) any Act of Ontario or of Canada or any agreement where the payment is from any government or government agency and is in lieu of taxes on real property or business assessment, but not including a payment referred to in section 498 of the *Municipal Act*; R.S.O. 1980, c. 302

“taxes for local purposes” means the taxes levied by an area municipality for local purposes under subsection 118b (2), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

R.S.O. 1980,
c. 31

“taxes for regional purposes” means the sum of taxes levied by an area municipality for regional purposes as specified in the regional rating by-laws under subsections 118 (2) and (3), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

“total taxes for all purposes” means the sum of the taxes for local purposes, the taxes for regional purposes and the taxes levied by the area municipality for school purposes under subsection 118a (1), excluding any adjustments under section 32 or 33 of the *Assessment Act*.

Area
municipalities
to share
payments in
lieu of taxes

(2) Where an area municipality is eligible to receive a payment in lieu of taxes for any year, it shall pay to the treasurer of the Regional Corporation a portion equal to the amount obtained by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for regional purposes for the year by the total of,

- (a) the taxes for local purposes for the year; and
- (b) the taxes for regional purposes for the year.

Sharing of
certain
payments

(3) Notwithstanding subsection (2), if an area municipality is eligible to receive a payment in lieu of taxes for any year under,

R.S.O. 1980,
c. 31

- (a) subsection 26 (3), (4) or (5) of the *Assessment Act*;

R.S.O. 1980,
c. 361

- (b) section 42 of the *Ontario Water Resources Act*;

R.S.O. 1980,
c. 384

- (c) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act;

R.S.O. 1980,
c. 510

- (d) section 10 or 11 of the *Trees Act*; or

1980-81-82-
83,
c. 37 (Can.)

- (e) the *Municipal Grants Act, 1980* (Canada),

and the calculation of the payment is based in part on the rates that were levied for school purposes, then the portion to be paid under subsection (2) shall be calculated by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for regional purposes for the year by the total taxes for all purposes for the year.

Treasurer
to provide
estimate
of share

(4) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the Regional Corporation and each school board showing an estimate of the amount that the area municipality will be required to pay to the Regional Corporation for the year under subsection (2) and to each school board under subsection 7 (10) of the *Housing Development Act* and under subsection 46 (9) of the *Power Corporation Act*.

R.S.O. 1980,
cc. 209, 384

Allocation
of payments
in lieu of
taxes

(5) Where an area municipality is required to pay a portion of a payment in lieu of taxes to the Regional Corporation under subsection (2), or to a school board,

- (a) subsections 26 (7) and (9) of the *Assessment Act*; R.S.O. 1980, c. 31
- (b) subsection 7 (10) of the *Housing Development Act*; R.S.O. 1980, c. 209
- (c) subsections 160 (12) and (16) and subsection 160a (4) of the *Municipal Act*; and R.S.O. 1980, c. 302
- (d) subsection 46 (7) of the *Power Corporation Act*, R.S.O. 1980, c. 384

with respect to the equalization of assessment or allocation and deposit of payments shall not apply to that entitlement.

120.—(1) Each area municipality shall pay a portion of the tax levied by it under subsections 161 (12) and (13) of the *Municipal Act* to the Regional Corporation and The Waterloo County Board of Education in the proportion that the taxes levied by it on commercial assessment in the year for each such body bears to the total taxes levied by it in the year on commercial assessment for all purposes, other than separate school board purposes. Payment of portion of telephone and telegraph tax

(2) In determining the taxes levied on commercial assessment under subsection (1), there shall be excluded any adjustments under section 32 or 33 of the *Assessment Act*. Exclusion of taxes added to collector's roll

(3) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the Regional Corporation and The Waterloo County Board of Education showing an estimate of the amount which the area municipality will be required to pay to that body for the year under subsection (1). Statement by treasurer

(4) Subsections 161 (18) to (24) of the *Municipal Act* do not apply if payments are made by an area municipality under subsection (1). Exclusion of R.S.O. 1980, c. 302, s. 161 (18-24)

120a.—(1) An amount payable by an area municipality to, Payment in lieu and telephone and telegraph levies

- (a) the Regional Corporation under subsection 119 (2) or 120 (1);
- (b) a public school board under subsection 120 (1); or
- (c) a school board under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act*, R.S.O. 1980, cc. 209, 384

is a debt of the area municipality to the Regional Corporation or school board, as the case may be, and, subject to sub-

sections (2) and (3), instalments are payable on account thereof as follows:

1. A first instalment equal to 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 31st day of March.
2. A second instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of June.
3. A third instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of September.
4. A fourth instalment of the balance of the entitlement for the year, on or before the 15th day of December.

Alternative
payment
schedule

(2) The Regional Council may by by-law provide for an alternative number of instalments and due dates for amounts payable by area municipalities to the Regional Corporation under subsection (1).

Idem

R.S.O. 1980,
c. 129

(3) Where a school board having jurisdiction within the Regional Area has established an agreement which applies to one or more area municipalities in accordance with subsection 215 (3) of the *Education Act*, the number of instalments and due dates specified in that agreement shall apply with necessary modifications to those amounts otherwise payable to the school board under subsection (1).

General
revenues

R.S.O. 1980,
cc. 209, 384

(4) An amount payable by an area municipality under subsection 119 (2) or 120 (1) or under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act* shall be credited by the Regional Corporation or school board to its general revenues.

Default

(5) If an area municipality fails to make any payment as provided under subsection (1) or as altered under subsection (2) or (3), the area municipality shall pay to the Regional Corporation or school board, as applicable, interest on the amount past due at the rate of 15 per cent per annum, or at such lower rate as the school board or Regional Corporation may by by-law determine from time to time.

Overpayment

(6) Where the total amount paid for the year under subsection (1), (2) or (3) exceeds the total amount payable for that purpose in the year, the area municipality shall notify the Regional Corporation or the school board, as the case may

be, of the amount of the overpayment and the Regional Corporation or school board shall forthwith pay that amount to the area municipality.

121.—(1) If the Minister of Revenue considers that, within any class or classes of real property within the Regional Area, any parcel or parcels of real property are assessed inequitably with respect to the assessment of any other parcel or parcels of real property of that class, the Minister of Revenue may direct that such changes be made in the assessment to be contained in the assessment roll next to be returned for each area municipality as will, in the Minister's opinion, eliminate or reduce inequalities in the assessment of any class or classes of real property, and the Minister of Revenue may, for that purpose, make regulations,

Region-wide
assessment
update

- (a) prescribing the classes of real property into which the real property in the Regional Area shall be divided for the purpose of this subsection;
- (b) prescribing standards and procedures to be used for the purpose of equalizing and making equitable the assessments of all real property belonging to the same class throughout the Regional Area;
- (c) providing that any equalization of assessment pursuant to a regulation made under clause (b) shall not alter, as between classes of real property throughout the Regional Area, the relative level of assessment at market value previously existing among such classes, or providing that the equalization shall alter such levels of assessment at market value no more than is reasonably necessary to provide equitability of assessment within each class.

(2) If the assessment roll of an area municipality for taxation in any year is changed pursuant to a direction of the Minister of Revenue under subsection (1),

Application
of
new
assessment
roll

- (a) the assessment roll to be returned for that area municipality for taxation in that year shall be the assessment roll as so changed and not the assessment roll that would otherwise have been returned; and
- (b) the assessment roll to be returned in each year following that year shall be the assessment roll returned under clause (a) as amended, added to, or otherwise altered under the *Assessment Act* up to

R.S.O. 1980,
c. 31

the date when the assessment roll is returned in each such following year.

Exception

(3) Notwithstanding subsection (2), where the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

Status of
assessment
roll

(4) For the purpose of every Act, the assessment roll of an area municipality returned under subsection (2) shall be deemed to be the assessment roll of the area municipality returned under the *Assessment Act*.

R.S.O. 1980,
c. 31

Mandatory
return of
updated roll
every fourth
year

(5) In every fourth year following the most recent direction under subsection (1), the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Resolution
required

(6) The Minister of Revenue shall not make a direction under subsection (1) unless the Regional Council by resolution has requested that a direction be made, but a resolution is not required where a direction of the Minister of Revenue is made as required under subsection (5).

Provisions of
R.S.O. 1980,
c. 31

(7) Except as provided in subsections (1) and (8), the *Assessment Act* and the alterations, corrections, additions and amendments authorized by that Act apply to an assessment roll returned under subsection (2).

Idem

(8) Subsections 63 (1) and (3) and sections 64 and 65 of the *Assessment Act* do not apply to an area municipality or to the assessment roll of any area municipality in respect of 1988 and subsequent years.

Powers on
appeal

(9) The Assessment Review Board, the Ontario Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Board, Ontario Municipal Board or court is satisfied that the assessment is inequitable with respect to the assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.

(10) Notwithstanding that a complaint, appeal, proceeding or action concerns an assessment made for taxation in a year prior to the year for which classes of real property were prescribed for the Regional Area under subsection (1), for the purpose of determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, real property described in a class prescribed under subsection (1) for the Regional Area is not similar to real property described in another class prescribed under subsection (1) for the Regional Area, and the inclusion of real property within a class so prescribed does not indicate that the real property is similar to other real property in that class.

Where property described in class prescribed under subs. (1)

(11) No amendment shall be made to the assessment or a collector's roll under clause 33 (a) of the *Assessment Act* until the cumulative value of the increase since the date of the most recent change to the assessment roll under a direction of the Minister of Revenue under subsection (1) is at least in the sum of \$5,000 at market value or, if the assessment in the Regional Area is at less than market value, at an equivalent rate.

No amendment to collector's roll
R.S.O. 1980, c. 31

(12) For the purposes of subsection 24 (16a) of the *Assessment Act*, changes made in the assessment roll of an area municipality under a direction of the Minister of Revenue under subsection (1) shall be deemed to be an update of the assessment of all property within the area municipality under subsection 63 (3) of the *Assessment Act*.

Table of rates for pipe lines

(13) Nothing in section 118, 118a or 118b deprives any person of any right of appeal provided for in the *Assessment Act* or affects the operation of subsection 36 (6) of that Act.

Rights of appeal preserved

(14) A regulation made under subsection (1) may be made retroactive to the 1st day of December of the year preceding the year in which it was made.

Regulations may be retroactive

122.—(1) Where changes are made in the assessment rolls of area municipalities under a direction of the Minister of Revenue under subsection 121 (1) and the changes directly affect the relative cost sharing of conservation authority responsibilities for any municipality beyond the Regional Area or cause within the Regional Area substantial tax shifts between municipalities, property classes or individual properties, the Lieutenant Governor in Council may, in order to minimize such effects, make regulations prescribing an alternative basis of apportionment to that specified under the *Conservation Authorities Act*.

Conservation Authority apportionments

R.S.O. 1980, c. 85

Regulation
may be
retroactive

(2) A regulation made under subsection (1) may be made retroactive to a date not earlier than the 1st day of January of the year in which it was made.

3. Subsection 163 (5) of the said Act is repealed and the following substituted therefor:

Operation of
regional
library
service

(5) The operation of the regional library service shall be limited to the township area municipalities.

4. Section 169 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 49, section 29, is repealed and the following substituted therefor:

Definition

169.—(1) In this Part, “waste” means ashes, garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other wastes as may be designated by by-law passed by the Regional Council.

Disposal
of waste

(2) The Regional Corporation shall provide facilities for the purposes of receiving, dumping and disposing of waste, and no area municipality shall provide such facilities.

Designation
of facilities

(3) The Regional Council shall, for each area municipality, designate one or more facilities for the receiving, dumping and disposing of waste or any class or classes thereof and, where such a designation has been made, an area municipality shall not utilize any facilities except the facilities that have been so designated for that area municipality.

Consent of
Regional
Council
required
R.S.O. 1980,
c. 303

(4) No facilities for the receiving, dumping and disposing of waste shall be provided in the Regional Area by any person or by any municipality, as defined in the *Municipal Affairs Act*, or by any other regional municipality or by a metropolitan or district municipality or by the County of Oxford or by a local board of a regional, district or metropolitan municipality or of the County of Oxford without the consent of the Regional Council, which consent may be given upon such terms and conditions, including the payment of compensation, as may be agreed upon.

Where
consent
refused

(5) Where the Regional Council refuses its consent under subsection (4) or the applicant and the Regional Council fail to agree on the terms and conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter, and may impose such terms and conditions as the Board considers appropriate and the decision of the Board is final.

(6) For the purposes of subsection (2), the Regional Corporation may,

Powers
respecting
disposal
of waste

- (a) acquire and use land;
- (b) erect, maintain and operate buildings, structures, machinery or equipment for the purposes of receiving, dumping and disposing of waste;
- (c) contract with any person for such purposes;
- (d) prohibit or regulate the dumping and disposing of waste or any class or classes thereof upon any such land;
- (e) prescribe rates or charges for the use of waste facilities, which rates or charges may relate to the volume, weight or class of waste, or otherwise as the Regional Council considers appropriate in the circumstances; and
- (f) provide standards and regulations for vehicles, or any class or classes thereof, used for the haulage of waste to any waste facility located in the Regional Area.

(7) The Regional Corporation shall pay to the corporation of any area municipality on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of such area municipality in respect of any municipal facility for the receiving, dumping and disposing of waste assumed by the Regional Corporation.

Payment
to area
municipality

(8) If the Regional Corporation fails to make any payment required under subsection (7), on or before the due date, the area municipality may charge the Regional Corporation interest at the rate of 15 per cent per annum, or such lower rate as the council of the area municipality determines, from such date until payment is made.

Interest

(9) For the purposes of subsection (6), paragraph 84 of section 210 of the *Municipal Act* applies with necessary modifications.

Application
of certain
provisions of
R.S.O. 1980,
c. 302

(10) A by-law passed under paragraph 129 of section 210 of the *Municipal Act* does not apply to the Regional Corporation.

Non-
applicability
of certain
by-laws

(11) The Regional Council may by by-law prescribe one or more routes on specified regional roads to be used by

Restrictions
respecting
the hauling
of wastes

vehicles, or any class or classes thereof, in hauling waste to any waste facility located in the Regional Area, and any such by-law may provide different restrictions by reference to the days and times set forth in the by-law.

Idem

(12) Subject to the approval of the Regional Council, the council of an area municipality may by by-law prescribe one or more routes on specified area municipality roads to be used by vehicles, or any class or classes thereof, in hauling waste to any waste facility located in such area municipality, and any such by-law may provide different restrictions by reference to the days and times set forth in the by-law.

Conversion
of waste

(13) The Regional Corporation may erect, maintain and operate buildings, structures, machinery or equipment for the purposes of recovering, manufacturing, producing, supplying, selling or distributing from domestic or industrial sewage or waste any product, resource, commodity, electrical power or energy, hot water or steam, and for such purposes may,

- (a) enter into agreements with any person;
- (b) carry on investigations, experiments, research or development;
- (c) construct and maintain pipes, apparatus and equipment on, over, under or across any highway or any other land with the consent of the owner of such land; and
- (d) acquire any patent or licence or any interest in any patent or licence, or dispose of any patent or licence by sale or otherwise.

Interpretation

(14) In subsection (13), "product" includes fuel derived from waste.

Non-
applicability
of
R.S.O. 1980,
c. 309

(15) The *Municipal Franchises Act* does not apply to any act of the Regional Corporation under subsection (13).

Collection
and removal
of
waste in area
municipality

169a.—(1) The Regional Council may, with the consent of an area municipality, assume the responsibility for the collection and removal of waste for that area municipality or for one or more defined areas therein.

Consent
required for
repeal of
regional
by-law

(2) A by-law passed by Regional Council under subsection (1) shall not be repealed without the consent of the area municipality which consented to the passing of the by-law.

(3) On and after the effective day of a by-law passed under subsection (1),

Where
Regional
Corporation
responsible
for
collection of
waste in area
municipality

- (a) the Regional Corporation shall be responsible for the collection and removal of waste in the area municipality or defined areas therein to which the by-law applies;
- (b) for the purposes of clause (a), the Regional Corporation has all the powers conferred by any general or special Act upon the area municipality or local board thereof for the collection and removal of waste;
- (c) no area municipality shall collect or remove waste in the area municipality or defined areas therein to which the by-law applies without the consent of the Regional Council, which consent may be given upon such terms and conditions, including the payment of compensation, as may be agreed upon;
- (d) all rights and obligations and all personal property of the area municipality pertaining to or exclusively used for the collection and removal of waste in the area municipality or defined areas therein to which the by-law applies are vested in the Regional Corporation without compensation;
- (e) subsections 169 (7) and (8) apply with necessary modifications to outstanding debts in respect of the property vested in the Regional Corporation under clause (d); and
- (f) where, prior to the effective date of the by-law, the area municipality had entered into an agreement for another municipality or person to collect and remove waste in the area municipality or defined area therein to which the by-law applies, the Regional Corporation shall be bound by the agreement, and the area municipality is relieved of all liability under the agreement.

(4) The Regional Council shall offer to employ every person who on the effective date of the by-law passed under subsection (1) is employed by the area municipality in the collection and removal of waste in the area municipality or defined area therein to which the by-law applies.

Offer of
employment
to be made

(5) Any person who accepts employment under subsection (4) is entitled to receive a wage or salary for the one year

Salary to be
paid in
first year

period following such acceptance of not less than that person was receiving on the date the by-law was passed.

Application
of certain
provisions

(6) Subsections 24 (2), (3), (5), (10), (11) and (13) apply with necessary modifications to a person who accepts employment with the Regional Corporation under subsection (4).

Costs may be
recovered
from area
municipality

(7) The Regional Council may by by-law provide for imposing on and collecting from an area municipality in which or in defined areas of which it collects and removes waste, a waste collection rate sufficient to pay the whole or such portion as the by-law may specify of the regional capital costs including debentures charges and expenditures for maintenance and operation of the waste collection and removal system in the area municipality and such rate may be based on the volume, weight or class of waste collected and removed or on any other basis that the by-law may specify.

Idem

(8) All rates under subsection (7) constitute a debt of the area municipality to the Regional Corporation and shall be payable at such times and in such amounts as may be specified by by-law of the Regional Council.

Payment
by area
municipality

(9) The area municipality may,

(a) pay the whole or part of the amount chargeable to it under this section out of its general funds;

(b) pass by-laws under paragraphs 85 and 86 of section 210 of the *Municipal Act* for imposing rates to recover the whole or part of the amount chargeable to the area municipality; and

(c) pass by-laws for imposing rates to recover the whole or part of the amount chargeable as part of the cost of an urban service within an urban service area established in the area municipality under any general or special Act.

R.S.O. 1980,
c. 302

Recycling
programs

169b.—(1) The Regional Corporation may establish and operate programs for the reduction, recovery, recycling and reuse of waste and the Regional Corporation may enter into agreements with one or more area municipalities to provide for the joint management and operation of the programs upon such terms and conditions as may be agreed upon.

Agreements

(2) An agreement under subsection (1) may provide that the Regional Corporation shall be responsible for the collection and marketing of waste separated by the public at source for recycling or reuse.

5. The said Act is amended by adding thereto the following section:

178.—(1) In this section,

Definitions

“development” means development as defined in subsection 40 (1) of the *Planning Act, 1983*;

1983, c. 1

“industrial development charge” means a uniform charge per hectare based on the total area of the land and all or any part of the net cost of providing the services;

“land” means the land described in the Schedule to subsection (2);

“net cost of providing the services” means the total cost to the Regional Corporation of providing the services after deducting all grants, subsidies or payments and any other moneys from any source which have been or will be received in respect of or applied against the cost of providing the services;

“services” means the undertakings and works prescribed by the Minister.

(2) The Regional Corporation may, in respect of any commercial or industrial development on all or any portion of the land described in the following Schedule, impose on and collect from the registered owners of all or any portion of the land being so developed an industrial development charge to defray all or any part of the net cost of providing the services:

Industrial
development
charge

SCHEDULE

The land located in the following areas:

1. The portion of the City of Cambridge described as follows:

Beginning at the intersection of the northwesterly limit of the King's Highway No. 401 and the northeasterly limit of the right of way of the Grand River Railway;

Thence northwesterly along the Grand River Railway to a westerly boundary of the City of Cambridge;

Thence southerly along the said westerly boundary to the northerly limit of the King's Highway No. 401;

Thence easterly along the northerly limit of the said Highway to the place of beginning.

2. The portion of the City of Kitchener described as follows:

Beginning at the intersection of the easterly boundary of the City of Kitchener and the northerly limit of the King's Highway No. 401;

Thence westerly along the northerly limit of the King's Highway No. 401 to the northeasterly limit of the King's Highway No. 8 (Old);

Thence northwesterly along the said northeasterly limit to the southwesterly limit of the King's Highway No. 8 (New);

Thence southeasterly along the southwesterly limit of the said King's Highway No. 8 (New) to the easterly boundary of the City of Kitchener;

Thence southerly along the said easterly boundary to the place of beginning.

Charge
constitutes
debt of
registered
owner

(3) An industrial development charge imposed under subsection (2) constitutes a debt of the registered owner to the Regional Corporation and may be recovered in a court of competent jurisdiction.

Payment
of charge
necessary
before
building
permit
issued

(4) An industrial development charge imposed under subsection (2) shall be paid before the issuance of any building permit required for the development.

Deeming
provision
R.S.O. 1980,
c. 51

(5) Subsection (4) shall be deemed to be "applicable law" for the purposes of clause 6 (1) (a) of the *Building Code Act*.

Disputes
referred to
Municipal
Board

(6) If the registered owner of the land upon which an industrial development charge has been imposed under subsection (2) disputes the amount of the charge, the registered owner, at any time prior to paying the charge to the Regional Corporation, may apply to the Municipal Board by written notice to the secretary of the Board and to the Regional Corporation, and the Board shall hear and determine the matter.

Reduction of
industrial
development
charge
1983, c. 1

(7) Subject to subsection (8), the amount of any development or lot charge imposed on the land by the Regional Corporation under section 50 of the *Planning Act, 1983* shall be reduced by the amount of the industrial development charge imposed and collected on the same land under this section.

Idem

(8) The amount of the reduction in the charge imposed under section 50 of the *Planning Act, 1983* arising out of the imposition of the industrial development charge shall not exceed the amount of the charge imposed under section 50 of the *Planning Act, 1983*.

Order of
Minister

(9) The Minister may by order prescribe the undertakings and works to which this section applies.

(10) The services shall be deemed to be provided to and utilized by any commercial or industrial development of all or any portion of the land.

Deeming
provision

6. Nothing in this Act affects the validity of an interim levy made by the Regional Council or by the council of an area municipality under section 120 of the *Regional Municipality of Waterloo Act* as it existed before the coming into force of this Act, and subsections 118 (9), (10) and (11) and subsection 118c (2) of that Act, as enacted by this Act, apply with necessary modifications to the interim levy made by the Regional Council in 1988 and subsections 118d (4), (5) and (6) of that Act, as enacted by this Act, apply with necessary modifications to an interim levy made by an area municipality in 1988.

Transition

R.S.O. 1980,
c. 442

7. Notwithstanding subsection 164 (2) of the *Municipal Act* or subsection 216 (2) of the *Education Act*, where the amount levied by an area municipality for regional purposes or school purposes in 1987 differs from the sum the area municipality ought to have levied for regional purposes or school purposes, the area municipality shall debit or credit such deficit or surplus, as applicable, to the general funds of the municipality and not revise the rates to be levied for such body in 1988.

Transition

R.S.O. 1980,
cc. 302, 129

8.—(1) Subsection 130 (10) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

(10) This section does not apply to The Haldimand-Norfolk Roman Catholic Separate School Board, The Sudbury District Roman Catholic Separate School Board, The Waterloo County Roman Catholic Separate School Board or to a separate school board having jurisdiction wholly or partly in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

Non-
application

R.S.O. 1980,
c. 302

(2) Subsection 214 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

(6) Subsections (3) and (5) do not apply to an area municipality in The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

Non-
application

R.S.O. 1980,
c. 302

(3) Clause 214b (2) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

(b) The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo.

(4) Subsection 222 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

Non-application

(4) Subsection (2) does not apply to an area municipality in The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

R.S.O. 1980,
c. 302

(5) Section 225 of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is repealed and the following substituted therefor:

Conflict

225. In the event of a conflict between any provision in sections 220 to 224 and any provision in any other Act, other than the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act*, the *Regional Municipality of Waterloo Act* and section 368d of the *Municipal Act*, the provisions in sections 220 to 224 prevail.

R.S.O. 1980,
cc. 435, 441,
442, 302

Commence-
ment

9.—(1) This Act, except sections 4 and 5, shall be deemed to have come into force on the 1st day of January, 1988.

Idem

(2) Sections 4 and 5 come into force on the day this Act receives Royal Assent.

Short title

10. The short title of this Act is the *Regional Municipality of Waterloo Statute Law Amendment Act, 1988*.

Bill 131

An Act to amend the Residential Rent Regulation Act, 1986

Ms Bryden

1st Reading May 9th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to amend the exemption provision in clause 4 (3) (a) of the Act in order to eliminate the exemption for buildings operated or administered but not owned by the Government of Canada or any agency thereof.

Bill 131**1988**

**An Act to amend the
Residential Rent Regulation Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 4 (3) (a) of the *Residential Rent Regulation Act, 1986*, being chapter 63, is repealed and the following substituted therefor:

- (a) a rental unit situate in a residential complex owned by the Government of Canada or owned, operated or administered by or on behalf of the Government of Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, except where otherwise prescribed, but where the tenant occupying the rental unit pays rent to a landlord which is not the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, this Act does apply.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Residential Rent Regulation Amendment Act, 1988*. Short title



Bill 132

An Act to amend the Mining Act

The Hon. S. Conway
Minister of Mines

1st Reading May 10th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The new section 59a provides a mechanism by which a mining recorder or the Commissioner may validate the status of an unpatented mining claim that has forfeited as a result of administrative error by the Ministry.

SECTION 2. Section 190 of the Act provides the authority to make regulations. The new clause adds to the scope of the authority.

SECTION 3. Section 212 of the Act provides that notice of default of payment of taxes shall be sent by registered mail. This is being changed to provide for notice being sent by certified mail.

Bill 132

1988

An Act to amend the Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

59a.—(1) A recorder may, by order, relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error from the forfeiture. Relief from forfeiture

(2) If any part of a claim referred to in subsection (1) has been staked by another staker, the recorder shall refer the matter to the Commissioner. Previous staking

(3) On a reference under subsection (2), the Commissioner may make such order, subject to such conditions, as the Commissioner considers appropriate. Order by Commissioner

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed in respect of the claim or provide for the payment of any fees in respect of the claim, or both. Extension of time

2. Subsection 190 (1) of the said Act is amended by adding thereto the following clause:

(d) prescribing classes of instruments and documents that may be filed through transmission by electronic means.

3. Subsection 212 (1) of the said Act is amended by striking out “registered” in the sixth line and inserting in lieu thereof “certified”.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Mining Amendment Act, 1988*.

Bill 132

*(Chapter 48
Statutes of Ontario, 1988)*

An Act to amend the Mining Act

The Hon. S. Conway
Minister of Mines

<i>1st Reading</i>	May 10th, 1988
<i>2nd Reading</i>	June 27th, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988



Bill 132

1988

An Act to amend the Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

59a.—(1) A recorder may, by order, relieve an unpaid mining claim that is subject to forfeiture as a result of an administrative error from the forfeiture. Relief from forfeiture

(2) If any part of a claim referred to in subsection (1) has been staked by another staker, the recorder shall refer the matter to the Commissioner. Previous staking

(3) On a reference under subsection (2), the Commissioner may make such order, subject to such conditions, as the Commissioner considers appropriate. Order by Commissioner

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed in respect of the claim or provide for the payment of any fees in respect of the claim, or both. Extension of time

2. Subsection 190 (1) of the said Act is amended by adding thereto the following clause:

(d) prescribing classes of instruments and documents that may be filed through transmission by electronic means.

3. Subsection 212 (1) of the said Act is amended by striking out “registered” in the sixth line and inserting in lieu thereof “certified”.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Mining Amendment Act, 1988*.

Bill 133

An Act to amend the Gasoline Handling Act

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading May 17th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The main purpose of the Bill is to provide a means to ascertain the number and location of underground tanks located on private outlets that are being used to store gasoline or associated products. In connection with this, some safety requirements are being implemented.

The use of the terms "private outlet" and "retail outlet" are being substituted for "consumer outlet" and "service station", respectively.

Bill 133**1988****An Act to amend the Gasoline Handling Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (c) of the *Gasoline Handling Act*, being chapter 185 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Section 1 of the said Act is amended by adding thereto the following clauses:

(la) “private outlet” means any premises at which gasoline or an associated product of the operator of the outlet is put into the fuel tanks of motor vehicles used by the operator of the outlet or into portable containers used by the operator of the outlet;

.

(ma) “retail outlet” means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor vehicles or into portable containers.

(3) Clause 1 (n) of the said Act is repealed.

2. Clause 2 (c) of the said Act is amended by striking out “service station, consumer outlet” in the first line and inserting in lieu thereof “private outlet, retail outlet”.

3. Section 3 of the said Act is amended by striking out “service station, consumer outlet” in the first line and inserting in lieu thereof “private outlet, retail outlet”.

4.—(1) Clause 6 (1) (a) of the said Act is amended by striking out “service station” and inserting in lieu thereof “retail outlet”.

(2) Subsection 6 (2) of the said Act is amended by striking out “consumer outlet” in the second line and inserting in lieu thereof “private outlet” and by striking out “service station” in the second and third lines and inserting in lieu thereof “retail outlet”.

5. The said Act is amended by adding thereto the following section:

Application
at private
outlets only

6a.—(1) The application of this section is limited to underground tanks located at private outlets or at sites that were private outlets.

Declaration

(2) Any owner of an underground tank that is being used for the storage of gasoline or an associated product or, if the owner is not the operator of the outlet, the operator of the outlet using the tank may file with the Director a declaration relating to the tank and evidence that the tank and associated piping are protected from external corrosion in accordance with the regulations.

Idem

(3) The declaration referred to in subsection (2) must be on a form provided by the Director.

Acknowledg-
ment

(4) The Director, upon receiving material under subsection (2), shall send an acknowledgment thereof to the person who sent it.

Idem

(5) No person, after the 1st day of January, 1991 or such later date as may be prescribed by regulation, shall,

- (a) use an underground tank or cause an underground tank to be used unless receipt of material relating to the tank has been acknowledged by the Director; or
- (b) put gasoline or an associated product into an underground tank unless receipt of material relating to the tank has been acknowledged by the Director.

Supplying
gasoline to
underground
tanks

(6) Every person who supplied gasoline or an associated product to an underground tank at any time in 1987 shall, by the 31st day of October, 1988 or such later date as may be prescribed by regulation, provide the Director with the address of the outlet and the name and address of the person who purchased the product.

Idem

(7) Every person who supplies gasoline or an associated product to an underground tank between the 1st day of January, 1988 and the 30th day of September, 1988 shall, by the 1st day of January, 1989 or such later date as may be pre-

scribed by regulation, provide the Director with the address of the outlet and the name and address of the person who purchased the product.

(8) Subsection (7) does not apply to a person who has supplied the address of the outlet and name and address of the purchaser under subsection (6). Idem

6. This Act comes into force on the day it receives Royal Assent. Commence-
ment

7. The short title of this Act is the *Gasoline Handling Amendment Act, 1988*. Short title





Bill 133

*(Chapter 49
Statutes of Ontario, 1988)*

An Act to amend the Gasoline Handling Act

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

<i>1st Reading</i>	May 17th, 1988
<i>2nd Reading</i>	June 21st, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

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Bill 133**1988****An Act to amend the Gasoline Handling Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (c) of the *Gasoline Handling Act*, being chapter 185 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Section 1 of the said Act is amended by adding thereto the following clauses:

(la) “private outlet” means any premises at which gasoline or an associated product of the operator of the outlet is put into the fuel tanks of motor vehicles used by the operator of the outlet or into portable containers used by the operator of the outlet;

.

(ma) “retail outlet” means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor vehicles or into portable containers.

(3) Clause 1 (n) of the said Act is repealed.

2. Clause 2 (c) of the said Act is amended by striking out “service station, consumer outlet” in the first line and inserting in lieu thereof “private outlet, retail outlet”.

3. Section 3 of the said Act is amended by striking out “service station, consumer outlet” in the first line and inserting in lieu thereof “private outlet, retail outlet”.

4.—(1) Clause 6 (1) (a) of the said Act is amended by striking out “service station” and inserting in lieu thereof “retail outlet”.

(2) Subsection 6 (2) of the said Act is amended by striking out “consumer outlet” in the second line and inserting in lieu thereof “private outlet” and by striking out “service station” in the second and third lines and inserting in lieu thereof “retail outlet”.

5. The said Act is amended by adding thereto the following section:

Application
at private
outlets only

6a.—(1) The application of this section is limited to underground tanks located at private outlets or at sites that were private outlets.

Declaration

(2) Any owner of an underground tank that is being used for the storage of gasoline or an associated product or, if the owner is not the operator of the outlet, the operator of the outlet using the tank may file with the Director a declaration relating to the tank and evidence that the tank and associated piping are protected from external corrosion in accordance with the regulations.

Idem

(3) The declaration referred to in subsection (2) must be on a form provided by the Director.

Acknowledg-
ment

(4) The Director, upon receiving material under subsection (2), shall send an acknowledgment thereof to the person who sent it.

Idem

(5) No person, after the 1st day of January, 1991 or such later date as may be prescribed by regulation, shall,

(a) use an underground tank or cause an underground tank to be used unless receipt of material relating to the tank has been acknowledged by the Director; or

(b) put gasoline or an associated product into an underground tank unless receipt of material relating to the tank has been acknowledged by the Director.

Supplying
gasoline to
underground
tanks

(6) Every person who supplied gasoline or an associated product to an underground tank at any time in 1987 shall, by the 31st day of October, 1988 or such later date as may be prescribed by regulation, provide the Director with the address of the outlet and the name and address of the person who purchased the product.

Idem

(7) Every person who supplies gasoline or an associated product to an underground tank between the 1st day of January, 1988 and the 30th day of September, 1988 shall, by the 1st day of January, 1989 or such later date as may be pre-

scribed by regulation, provide the Director with the address of the outlet and the name and address of the person who purchased the product.

(8) Subsection (7) does not apply to a person who has supplied the address of the outlet and name and address of the purchaser under subsection (6). Idem

6. This Act comes into force on the day it receives Royal Assent. Commence-
ment

7. The short title of this Act is the *Gasoline Handling Amendment Act, 1988*. Short title





Bill 134

An Act to repeal certain Private Acts related to Municipalities

The Hon. J. Eakins
Minister of Municipal Affairs

1st Reading May 18th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to repeal various municipal private Acts that are obsolete or unnecessary.

Bill 134**1988**

**An Act to repeal
certain Private Acts related to Municipalities**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** The Acts listed in the Schedule hereto are hereby repealed. Repeal
- 2.** A municipality incorporated by an Act listed in the Schedule and that was in existence immediately prior to the coming into force of this Act shall be deemed to be continued with the same status as it had immediately prior to the coming into force of this Act. Status not affected
- 3.** Nothing in this Act affects the boundaries of any municipality as those boundaries existed immediately prior to the coming into force of this Act. Boundaries not affected
- 4.** This Act comes into force on the day it receives Royal Assent. Commencement
- 5.** The short title of this Act is the *Municipal Private Acts Repeal Act, 1988*. Short title

SCHEDULE

ACTS REPEALED

Municipality	Year and Chapter
ALFRED, Township.....	1926, c. 74; 1959, c. 109
BLOOMFIELD, Village.....	1923, c. 58
CHATHAM AND NORTH GORE, Township.....	1907, c. 92
CHELMSFORD, Town.....	1940, c. 39; 1956, c. 101, c. 102
CHESLEY, Town.....	1911, c. 86; 1959, c. 113
COLEMAN, Township.....	1910, c. 112
DRYDEN, Town.....	1912, c. 93
DUNNVILLE, Town.....	1900, c. 66; 1913, c. 95; 1914, c. 68; 1920, c. 118; 1927, c. 106
EAST WINDSOR, City.....	1930, c. 74; 1931, c. 92; 1932, c. 98
ERAMOSA, Township.....	1962-63, c. 160
ESSEX, County.....	1924, c. 94
EXETER, Town.....	1893, c. 62; 1978, c. 117
FORD CITY, Town.....	1924, c. 96
GALT, Town.....	1889, c. 60
GRANTHAM, Township.....	1926, c. 83; 1957, c. 137
HALLOWELL, Township.....	1923, c. 58
HASTINGS, County.....	1868, c. 46
HEARST, Town.....	1961-62, c. 153
HUMBERSTONE, Township.....	1908, c. 85; 1912, c. 102
KINGSTON, Township.....	1949, c. 128; 1960, c. 148
LAMBTON, County.....	1875-76, c. 60; 1906, c. 131
LANARK, County.....	1903, c. 60; 1913, c. 101
LAXTON, DIGBY AND LONGFORD, Townships.....	1889, c. 64
MATCHEDASH, Township.....	1910, c. 151
McGILLIVRAY, Township.....	1870-71, c. 65
METHUEN, Township.....	1946, c. 101
MIDLAND, Town.....	1898, c. 47; 1899, c. 61; 1901, c. 60; 1903, c. 65, c. 66; 1905, c. 58; 1908, c. 94; 1909, c. 112; 1913, c. 105; 1914, c. 75; 1917, c. 76; 1921, c. 110; 1923, c. 73
MILTON, Town.....	1891, c. 74; 1900, c. 78; 1912, c. 108
NEW LISKEARD, Town.....	1911, c. 96; 1930, c. 87
NORTHUMBERLAND AND DURHAM, Counties.....	1875-76, c. 54; 1905, c. 62; 1906, c. 84; 1908, c. 100; 1962-63, c. 176
OIL SPRINGS, Village.....	1895, c. 71
ORANGEVILLE, Town.....	1886, c. 61; 1894, c. 74; 1914, c. 80; 1919, c. 99; 1920, c. 130
ORILLIA, City.....	1871-72, c. 66

OTTAWA, City.....	1889, c. 67; 1890, c. 96, c. 97; 1891, c. 77; 1893, c. 74, c. 75, c. 76; 1896, c. 87; 1897, c. 72; 1899, c. 66; 1900, c. 80, c. 81, c. 82, c. 83; 1901, c. 62; 1905, c. 65; 1906, c. 87; 1907, c. 79; 1912, c. 114; 1914, c. 82, c. 83; 1917, c. 79; 1918, c. 72; 1919, c. 102; 1921, c. 115; 1922, c. 123; 1923, c. 77; 1925, c. 98; 1926, c. 89; 1927, c. 119, c. 120; 1928, c. 74; 1931, c. 116; 1932, c. 81; 1933, c. 90; 1934, c. 89; 1935, c. 91; 1936, c. 78; 1937, c. 96; 1946, c. 133; 1948, c. 117; 1953, c. 122; 1954, c. 120; 1956, c. 112; 1961-62, c. 160
PEEL, County.....	1941, c. 69
PEMBROKE, Town.....	1913, c. 112; 1914, c. 86; 1921, c. 116; 1924, c. 115; 1957, c. 151
PENETANGUISHENE, Town.....	1897, c. 73; 1910, c. 122; 1917, c. 82; 1923, c. 78; 1931, c. 117
PETROLIA, Town.....	1899, c. 72; 1901, c. 64; 1903, c. 75; 1905, c. 68; 1906, c. 89; 1917, c. 84; 1923, c. 79; 1943, c. 45
PORT COLBORNE, City.....	1907, c. 84; 1913, c. 116; 1921, c. 120; 1923, c. 82; 1953, c. 127
PORT McNICOLL, Village.....	1919, c. 108
PUSLINCH, Township.....	1974, c. 167
RALEIGH AND HARWICH, Townships.....	1960, c. 164
RICHMOND HILL, Town.....	1931, c. 114; 1960-61, c. 131
RIVERSIDE, Town.....	1928, c. 77; 1931, c. 120; 1932, c. 85; 1948, c. 121; 1955, c. 110
SANDWICH, Town.....	1913, c. 120; 1916, c. 90; 1918, c. 78; 1924, c. 121; 1927, c. 124; 1928, c. 78, c. 79; 1929, c. 119; 1930, c. 95; 1931, c. 122; 1933, c. 72, c. 97
SANDWICH EAST, Town.....	1928, c. 80
SANDWICH SOUTH, Township..	1920, c. 139
SANDWICH WEST, Township....	1920, c. 140
SARNIA, City.....	1915, c. 70; 1916, c. 91; 1926, c. 92; 1927, c. 126; 1929, c. 120; 1930, c. 97; 1932, c. 88; 1937, c. 101; 1947, c. 139; 1972, c. 191
SAULT STE. MARIE, City.....	1877, c. 32; 1890, c. 135; 1894, c. 80; 1895, c. 119; 1903, c. 81; 1907, c. 89; 1908, c. 108; 1909, c. 121; 1912, c. 122; 1914, c. 94, c. 95; 1915, c. 71; 1916, c. 92; 1918, c. 80; 1919, c. 105; 1920, c. 137; 1921, c. 123; 1922, c. 126; 1923, c. 87; 1924, c. 122; 1925, c. 104; 1926, c. 93; 1930, c. 98; 1958, c. 152; 1959, c. 133
ST. CATHARINES, City.....	1880, c. 45; 1895, c. 78, c. 79; 1900, c. 93; 1901, c. 98; 1905, c. 71, c. 72, c. 73, c. 74; 1906, c. 94; 1907, c. 86; 1909, c. 119; 1910, c. 126, c. 127, c. 128; 1911, c. 110, c. 111; 1915, c. 69; 1916, c. 89; 1917, c. 89; 1919, c. 104; 1920, c. 136; 1922, c. 128; 1923, c. 85; 1932, c. 87; 1924, c. 118
TECK, Township.....	1927, c. 128; 1958, c. 158
THOROLD, Township.....	1927, c. 130; 1946, c. 140

TILBURY EAST, Township	1893, c. 83; 1905, c. 81; 1912, c. 125
TILBURY, Town	1890, c. 103; 1931, c. 129
WALKERVILLE, Town	1916, c. 97; 1919, c. 112, c. 113; 1920, c. 146; 1925, c. 114; 1926, c. 103; 1928, c. 90; 1930, c. 107; 1932, c. 98; 1933, c. 107; 1934, c. 100
WASAGA BEACH, Village	1971, c. 132
WATERLOO, City	1914, c. 104; 1917, c. 96; 1939, c. 77; 1958, c. 163; 1962-63, c. 196; 1972, c. 203
WELLAND, County	1968, c. 182; 1968-69, c. 170
WELLAND, City	1918, c. 56; 1953, c. 134
WEST LORNE, Police Village	1906, c. 104
WESTPORT, Village	1906, c. 68
WINCHESTER, Village	1899, c. 89
WINDSOR, City	1897, c. 83; 1900, c. 108; 1901, c. 99; 1904, c. 74; 1905, c. 111; 1907, c. 97; 1908, c. 120; 1910, c. 136; 1914, c. 110, c. 112; 1920, c. 147, c. 148; 1921, c. 127; 1923, c. 97; 1925, c. 117; 1928, c. 93; 1929, c. 126; 1932, c. 95; 1935, c. 98; 1951, c. 120; 1962-63, c. 197
WINGHAM, Town	1888, c. 64; 1896, c. 100; 1915, c. 79; 1928, c. 94



Bill 134

*(Chapter 6
Statutes of Ontario, 1989)*

An Act to repeal certain Private Acts related to Municipalities

The Hon. J. Eakins
Minister of Municipal Affairs

<i>1st Reading</i>	May 18th, 1988
<i>2nd Reading</i>	February 21st, 1989
<i>3rd Reading</i>	February 23rd, 1989
<i>Royal Assent</i>	February 27th, 1989



Bill 134

1988

**An Act to repeal
certain Private Acts related to Municipalities**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Acts listed in the Schedule hereto are hereby repealed. Repeal

2. A municipality incorporated by an Act listed in the Schedule and that was in existence immediately prior to the coming into force of this Act shall be deemed to be continued with the same status as it had immediately prior to the coming into force of this Act. Status not affected

3. Nothing in this Act affects the boundaries of any municipality as those boundaries existed immediately prior to the coming into force of this Act. Boundaries not affected

4. This Act comes into force on the day it receives Royal Assent. Commencement

5. The short title of this Act is the *Municipal Private Acts Repeal Act, 1989*. Short title

SCHEDULE

ACTS REPEALED

Municipality	Year and Chapter
ALFRED, Township.....	1926, c. 74; 1959, c. 109
BLOOMFIELD, Village.....	1923, c. 58
CHATHAM AND NORTH GORE, Township.....	1907, c. 92
CHELMSFORD, Town.....	1940, c. 39; 1956, c. 101, c. 102
CHESLEY, Town.....	1911, c. 86; 1959, c. 113
COLEMAN, Township.....	1910, c. 112
DRYDEN, Town.....	1912, c. 93
DUNNVILLE, Town.....	1900, c. 66; 1913, c. 95; 1914, c. 68; 1920, c. 118; 1927, c. 106
EAST WINDSOR, City.....	1930, c. 74; 1931, c. 92; 1932, c. 98
ERAMOSA, Township.....	1962-63, c. 160
ESSEX, County.....	1924, c. 94
EXETER, Town.....	1893, c. 62; 1978, c. 117
FORD CITY, Town.....	1924, c. 96
GALT, Town.....	1889, c. 60
GRANTHAM, Township.....	1926, c. 83; 1957, c. 137
HALLOWELL, Township.....	1923, c. 58
HASTINGS, County.....	1868, c. 46
HEARST, Town.....	1961-62, c. 153
HUMBERSTONE, Township.....	1908, c. 85; 1912, c. 102
KINGSTON, Township.....	1949, c. 128; 1960, c. 148
LAMBTON, County.....	1875-76, c. 60; 1906, c. 131
LANARK, County.....	1903, c. 60; 1913, c. 101
LAXTON, DIGBY AND LONGFORD, Townships.....	1889, c. 64
MATCHEDASH, Township.....	1910, c. 151
McGILLIVRAY, Township.....	1870-71, c. 65
METHUEN, Township.....	1946, c. 101
MIDLAND, Town.....	1898, c. 47; 1899, c. 61; 1901, c. 60; 1903, c. 65, c. 66; 1905, c. 58; 1908, c. 94; 1909, c. 112; 1913, c. 105; 1914, c. 75; 1917, c. 76; 1921, c. 110; 1923, c. 73
MILTON, Town.....	1891, c. 74; 1900, c. 78; 1912, c. 108
NEW LISKEARD, Town.....	1911, c. 96; 1930, c. 87
NORTHUMBERLAND AND DURHAM, Counties.....	1875-76, c. 54; 1905, c. 62; 1906, c. 84; 1908, c. 100; 1962-63, c. 176
OIL SPRINGS, Village.....	1895, c. 71
ORANGEVILLE, Town.....	1886, c. 61; 1894, c. 74; 1914, c. 80; 1919, c. 99; 1920, c. 130
ORILLIA, City.....	1871-72, c. 66

OTTAWA, City	1889, c. 67; 1890, c. 96, c. 97; 1891, c. 77; 1893, c. 74, c. 75, c. 76; 1896, c. 87; 1897, c. 72; 1899, c. 66; 1900, c. 80, c. 81, c. 82, c. 83; 1901, c. 62; 1905, c. 65; 1906, c. 87; 1907, c. 79; 1912, c. 114; 1914, c. 82, c. 83; 1917, c. 79; 1918, c. 72; 1919, c. 102; 1921, c. 115; 1922, c. 123; 1923, c. 77; 1925, c. 98; 1926, c. 89; 1927, c. 119, c. 120; 1928, c. 74; 1931, c. 116; 1932, c. 81; 1933, c. 90; 1934, c. 89; 1935, c. 91; 1936, c. 78; 1937, c. 96; 1946, c. 133; 1948, c. 117; 1953, c. 122; 1954, c. 120; 1956, c. 112; 1961-62, c. 160
PEEL, County	1941, c. 69
PEMBROKE, Town	1913, c. 112; 1914, c. 86; 1921, c. 116; 1924, c. 115; 1957, c. 151
PENETANGUISHENE, Town	1897, c. 73; 1910, c. 122; 1917, c. 82; 1923, c. 78; 1931, c. 117
PETROLIA, Town	1899, c. 72; 1901, c. 64; 1903, c. 75; 1905, c. 68; 1906, c. 89; 1917, c. 84; 1923, c. 79; 1943, c. 45
PORT COLBORNE, City	1907, c. 84; 1913, c. 116; 1921, c. 120; 1923, c. 82; 1953, c. 127
PORT McNICOLL, Village	1919, c. 108
PUSLINCH, Township	1974, c. 167
RALEIGH AND HARWICH, Townships	1960, c. 164
RICHMOND HILL, Town	1931, c. 114; 1960-61, c. 131
RIVERSIDE, Town	1928, c. 77; 1931, c. 120; 1932, c. 85; 1948, c. 121; 1955, c. 110
SANDWICH, Town	1913, c. 120; 1916, c. 90; 1918, c. 78; 1924, c. 121; 1927, c. 124; 1928, c. 78, c. 79; 1929, c. 119; 1930, c. 95; 1931, c. 122; 1933, c. 72, c. 97
SANDWICH EAST, Town	1928, c. 80
SANDWICH SOUTH, Township ..	1920, c. 139
SANDWICH WEST, Township	1920, c. 140
SARNIA, City	1915, c. 70; 1916, c. 91; 1926, c. 92; 1927, c. 126; 1929, c. 120; 1930, c. 97; 1932, c. 88; 1937, c. 101; 1947, c. 139; 1972, c. 191
SAULT STE. MARIE, City	1877, c. 32; 1890, c. 135; 1894, c. 80; 1895, c. 119; 1903, c. 81; 1907, c. 89; 1908, c. 108; 1909, c. 121; 1912, c. 122; 1914, c. 94, c. 95; 1915, c. 71; 1916, c. 92; 1918, c. 80; 1919, c. 105; 1920, c. 137; 1921, c. 123; 1922, c. 126; 1923, c. 87; 1924, c. 122; 1925, c. 104; 1926, c. 93; 1930, c. 98; 1958, c. 152; 1959, c. 133
ST. CATHARINES, City	1880, c. 45; 1895, c. 78, c. 79; 1900, c. 93; 1901, c. 98; 1905, c. 71, c. 72, c. 73, c. 74; 1906, c. 94; 1907, c. 86; 1909, c. 119; 1910, c. 126, c. 127, c. 128; 1911, c. 110, c. 111; 1915, c. 69; 1916, c. 89; 1917, c. 89; 1919, c. 104; 1920, c. 136; 1922, c. 128; 1923, c. 85; 1932, c. 87; 1924, c. 118
TECK, Township	1927, c. 128; 1958, c. 158
THOROLD, Township	1927, c. 130; 1946, c. 140

TILBURY EAST, Township	1893, c. 83; 1905, c. 81; 1912, c. 125
TILBURY, Town	1890, c. 103; 1931, c. 129
WALKERVILLE, Town	1916, c. 97; 1919, c. 112, c. 113; 1920, c. 146; 1925, c. 114; 1926, c. 103; 1928, c. 90; 1930, c. 107; 1932, c. 98; 1933, c. 107; 1934, c. 100
WASAGA BEACH, Village	1971, c. 132
WATERLOO, City	1914, c. 104; 1917, c. 96; 1939, c. 77; 1958, c. 163; 1962-63, c. 196; 1972, c. 203
WELLAND, County	1968, c. 182; 1968-69, c. 170
WELLAND, City	1918, c. 56; 1953, c. 134
WEST LORNE, Police Village	1906, c. 104
WESTPORT, Village	1906, c. 68
WINCHESTER, Village	1899, c. 89
WINDSOR, City	1897, c. 83; 1900, c. 108; 1901, c. 99; 1904, c. 74; 1905, c. 111; 1907, c. 97; 1908, c. 120; 1910, c. 136; 1914, c. 110, c. 112; 1920, c. 147, c. 148; 1921, c. 127; 1923, c. 97; 1925, c. 117; 1928, c. 93; 1929, c. 126; 1932, c. 95; 1935, c. 98; 1951, c. 120; 1962-63, c. 197
WINGHAM, Town	1888, c. 64; 1896, c. 100; 1915, c. 79; 1928, c. 94

Bill 135

An Act to amend the Road Access Act

The Hon. J. Eakins

Minister of Municipal Affairs

1st Reading May 18th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to prohibit, in certain circumstances, the maintaining of a barrier or obstacle over an access road or common road that prevents the use of the road unless application is made to a judge. At present, the Act speaks only of constructing or placing a barrier but does not include maintaining.

Bill 135

1988

An Act to amend the Road Access Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Road Access Act*, being chapter 457 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(ca) “maintain” includes the leaving of a barrier or other obstacle on an access road or common road.

2.—(1) Subsection 2 (1) of the said Act is amended by striking out “or place” in the first line and inserting in lieu thereof “place or maintain”.

(2) Subsection 2 (2) of the said Act is amended by striking out “or place” in the first line and inserting in lieu thereof “place or maintain”.

3. This Act comes into force on the day it receives Royal Assent. Commence-
ment

4. The short title of this Act is the *Road Access Amendment Act, 1988*. Short title

Bill 135

*(Chapter 7
Statutes of Ontario, 1989)*

An Act to amend the Road Access Act

The Hon. J. Eakins
Minister of Municipal Affairs

<i>1st Reading</i>	May 18th, 1988
<i>2nd Reading</i>	February 21st, 1989
<i>3rd Reading</i>	February 23rd, 1989
<i>Royal Assent</i>	February 27th, 1989

Bill 135**1988****An Act to amend the Road Access Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Road Access Act*, being chapter 457 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(ca) “maintain” includes the leaving of a barrier or other obstacle on an access road or common road.

2.—(1) Subsection 2 (1) of the said Act is amended by striking out “or place” in the first line and inserting in lieu thereof “place or maintain”.

(2) Subsection 2 (2) of the said Act is amended by striking out “or place” in the first line and inserting in lieu thereof “place or maintain”.

3. This Act comes into force on the day it receives Royal Assent. Commence-
ment

4. The short title of this Act is the *Road Access Amendment Act, 1989*. Short title

Bill 136

An Act respecting Private Members' Public Bills

Mr. Henderson

1st Reading May 18th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to provide democratic procedures for the introduction and consideration of private members' public Bills.

A Standing Committee on Private Members' Public Bills is established. Following the first reading of a private member's public Bill, the Committee determines whether the Bill merits debate, using criteria stated in the Act, and determines the order in which Bills are to be debated in the Assembly.

Two weekly sessions of the Legislative Assembly are set aside for consideration of private members' public Bills. Time limits on debate and on the amount of time a member may speak on a Bill are set out.

Private members' public Bills are referred to an appropriate standing committee of the Legislative Assembly following second reading. Guidelines are established for determining the order in which standing committees may consider matters referred to them and to encourage committees to deal promptly with private members' public Bills.

Third reading of a private member's public Bill and scheduling for Royal Assent to the Bill occur within a specified time.

Bill 136

1988

An Act respecting Private Members' Public Bills

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“Assembly” means the Legislative Assembly of the Province of Ontario;

“private member” means a member of the Assembly who is not a member of the Executive Council;

“Standing Committee” means the Standing Committee on Private Members' Public Bills established under subsection 3 (1).

(2) In this Act, a “sitting week” of the Assembly is any week during which the Assembly sits.

Calculation of time

2. The procedures for the introduction and consideration of private members' public Bills are set out in this Act.

Purpose of Act

3.—(1) There shall be established a standing committee of the Assembly to consider private members' public Bills called the “Standing Committee on Private Members' Public Bills”.

Standing committee to be established

(2) The chairman of the Standing Committee shall be elected by secret ballot of the members of the Assembly.

Committee chairman elected

(3) The Standing Committee shall include at least one member from each caucus that has four or more elected members of the Assembly.

Party affiliation of members

(4) Despite the composition of the Assembly, the total number of opposition members of the Standing Committee shall not exceed the total number of government members.

Idem

Selection of
members

(5) The members of the Standing Committee representing a caucus shall be elected from among candidates nominated by that caucus by secret ballot of the caucus.

Term of
membership

(6) The members of the Standing Committee are elected for a term of one year and are eligible for re-election.

Introduction
of Bills

4.—(1) A private member's public Bill may be introduced and receive first reading on any sitting day of the Assembly during which Bills may be introduced.

Submission
to Standing
Committee

(2) A private member who introduced a public Bill that received first reading may submit the Bill to the Standing Committee for a determination of whether the Bill merits debate.

Duties of
Standing
Committee

5.—(1) The Standing Committee shall examine the substance of a private member's public Bill and determine whether the Bill merits debate.

Criteria for
Bill being
debated

(2) A private member's public Bill merits debate unless the Standing Committee finds that,

- (a) the principal purpose of the Bill is to embarrass the government or an opposition caucus;
- (b) the substance of the Bill is frivolous;
- (c) the subject-matter of the Bill is primarily local in nature;
- (d) the provisions of the Bill are unworkable or otherwise cannot be successfully implemented;
- (e) the Bill appropriates a part of the Consolidated Revenue Fund or imposes a tax; or
- (f) the Bill does not merit the attention of the Assembly for another reason.

Non-partisan
committee

(3) The Standing Committee shall act in a non-partisan manner.

Period set
aside for
private
members'
public Bills

6.—(1) There shall be set aside two weekly three hour sessions of the Assembly for consideration of private members' public Bills.

Order for
considering
Bills

(2) The order for consideration of private members' public Bills during the weekly sessions referred to in subsection (1) shall be determined by the Standing Committee.

7.—(1) A private member's public Bill that the Standing Committee determines merits debate shall be scheduled for second reading. Second reading of Bills

(2) A motion for the second reading of a private member's public Bill may be debated for a maximum of six hours. Limitation on debate

(3) Despite subsection (2), a motion for the second reading of a private member's public Bill may be debated for additional periods of six hours each upon the vote of the Assembly. Exception

(4) Where the Assembly has voted an additional period of debate on a Bill under subsection (3), the additional debate shall be scheduled to take place within four sitting weeks after the first six hours of debate. Scheduling of additional debate

(5) No member may speak for more than twenty minutes on a motion for the second reading of a private member's public Bill except the member who moved second reading of the Bill who may speak for a maximum of forty minutes inclusive of that member's reply. Time limit on debate

(6) A reply is allowed to the member who moved second reading of a private member's public Bill after all members wishing to speak to the motion, and any amendments thereto, have spoken. Reply

(7) A motion for the second reading of a private member's public Bill shall be decided, and the Bill shall be read a second time, immediately after the end of debate on the motion. Question to be put

8. If a question arises as to whether a private member's public Bill appropriates any part of the Consolidated Revenue Fund or imposes any tax, the Bill may receive first reading but may not be ordered for second reading if the Speaker of the Legislative Assembly rules that the Bill appropriates any part of the Consolidated Revenue Fund or imposes any tax. Money Bills

9.—(1) A private member's public Bill that has received second reading shall be referred to a standing committee of the Assembly other than the Standing Committee on Private Members' Public Bills. Bill to standing committee

(2) The private member who introduced a public Bill may express his or her preference as to which standing committee would be most appropriate to consider the Bill. Idem

(3) If there is not unanimous agreement concerning which standing committee a private member's public Bill should be Determination by vote

referred to after second reading, the choice of committee shall be determined by a vote of the Assembly.

Order of
business

10.—(1) The standing committee to which a private member's public Bill is referred after second reading shall deal with legislative business in the order in which it is received unless the Assembly determines by a vote that a matter is urgent and shall be given priority.

Consideration
of Bill to be
completed

(2) A standing committee considering a private member's public Bill, forthwith upon completing its deliberations, shall order that the Bill be reported to the Assembly for third reading.

Vote on
third reading

11. A private member's public Bill ordered for third reading shall be voted upon in either of the weekly sessions set aside for private members' public Bills not more than four sitting weeks after it has been ordered for third reading.

Royal Assent

12. A private member's public Bill that receives third reading shall be scheduled to receive Royal Assent,

(a) not later than four weeks after the date that it received third reading; or

(b) before the day the Assembly prorogues or recesses,

whichever is earlier.

Conflict

13. In the event of a conflict between a provision of this Act and a provision of the Standing Orders of the Assembly, the provision of this Act prevails.

Commence-
ment

14. This Act comes into force on the day it receives Royal Assent.

Short title

15. The short title of this Act is the *Private Members' Public Bills Act, 1988*.

Bill 137

An Act to amend the Public Lands Act

The Hon. V. Kerrio
Minister of Natural Resources

1st Reading May 19th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 1. The section is rewritten to provide for the appointment of officers by the Minister rather than by the Lieutenant Governor in Council and to authorize the officers to enter upon private land to discharge their duties. The section also provides that officers appointed under the *Forest Fires Prevention Act* are deemed to be officers appointed under the *Public Lands Act*.

SECTION 2.—Subsection 1. Section 13 of the Act deals with areas in territory without municipal organization that are designated as restricted areas by the Minister. Subsection 13 (3) of the Act now reads as follows:

(3) Every person who erects or causes to be erected a building or structure or makes or causes to be made any improvement on lands in an area designated by the Minister as a restricted area without a permit therefor and every person who contravenes or causes to be contravened any term or condition of a permit issued under this section is guilty of an offence and on conviction is liable to a fine of not more than \$500.

The amendment increases the maximum fine from \$500 to \$5,000.

Subsection 2. The new subsection 13 (3a) authorizes an officer to order that work that is being done without a permit cease and makes it an offence to continue such work after an order has been made.

The new subsection 13 (3b) authorizes a court to order the removal of any building or structure erected or improvement made in contravention of section 13 of the Act and provides that the Minister may effect the removal and recover the cost for so doing.

SECTION 3. The new section 13a requires a work permit where any activity such as mineral exploration, logging or industrial operations is to be carried on or any improvements are to be constructed on public lands. The section also creates an offence and provides penalties for contravention of the section. Provision is made for appeals from refusal to issue or renew permits and to provide for exemptions for the requirement to have a permit.

SECTION 4. Subsection 16 (1) of the Act clarifies that the period of actual possession is to be determined by the *Limitations Act*. Subsection 16 (2) gives retroactive effect to quit claim letters patent that are issued to a predecessor in title.

SECTION 5. The new subsection 23 (4a) permits the Minister to recover any cost incurred in selling, disposing of or destroying any improvements made to public lands occupied without authority or where the person responsible for making the improvements refuses or neglects to remove them after authority to occupy the lands has terminated.

SECTION 6. The new section 23a authorizes the Minister to grant relief from forfeiture under subsection 22 (1) and subsection 23 (4) of the Act.

SECTION 7. Section 25 of the Act is amended to, in effect, increase the maximum fine from \$500 to \$5,000 and to add a subsection that authorizes the Minister to have the material, substance or thing deposited on public lands in contravention of subsection (1) removed and to recover any cost incurred in so doing. The increase in the fine is effected by section 67 of the Act as re-enacted by section 18 of the Bill.

SECTION 8. The purpose of the rewritten subsections is to permit the Minister to determine whether a Crown grant should be registered under the *Land Titles Act* or the *Registry Act* by removing directions to the Minister as to the office for registration. In many dispositions of public land, for example, shoreline road allowances or Crown reserves, the grantee already holds adjoining land registered under the *Registry Act* and, by acquiring a Crown grant registered under the *Land Titles Act*, the grantee holds land with a split registration under both Acts causing hardship to land owners and their lawyers in future dealings with their lands.

SECTION 9. The new section 36a authorizes the Minister to deal with patented lands that have reverted to or become vested in the Crown, in the same manner as public lands that were never patented. Existing easements and the rights of adjoining owners would, however, be preserved.

SECTION 10. Section 37 of the Act prohibits employees of the Ministry from purchasing public lands without prior approval.

The new subsection creates an exception where public lands are purchased for private use and the conditions set out in the subsection are satisfied.

SECTION 11. The section is rewritten to abolish the Public Agricultural Lands Committee and to substitute the Minister in its place to accord with the Ministry's policy objective of increasing the efficiency of processing applications for public agricultural land.

SECTION 12. The Act prohibits using public lands without authority. Currently authority is given on a case-by-case basis by contractual agreement. The new section will permit certain common activities to be dealt with by the regulations.

SECTION 13. Section 53 of the Act deals with land sold under Part I of *The Public Lands Act*, being chapter 324 of the Revised Statutes of Ontario, 1960, or located under Part II of that Act.

The effect of the amendment is broadened to include any predecessor of *The Public Lands Act*, being chapter 324 of the Revised Statutes of Ontario, 1960, and any other Act under which public land was sold or located.

SECTION 14. The purpose of the new subsection is to void certain conditions concerning pine timber and cut timber contained in letters patent granting public lands for summer resort locations.

SECTIONS 15 and 17. Subsections 58 (5) and 66 (2) of the Act are rewritten to provide that the fee for certificates will be prescribed by the regulations instead of being set out in the Act.

SECTION 16. Section 63 of the Act deals with reservations in letters patent issued for land that is in a municipality.

The provisions are rewritten to include all land granted by letters patent and not just land that is in a municipality and to enlarge the classes of reservations that a Minister's order may affect to include a right-of-way. The purpose of the amendment is to permit owners of land affected by the reservations to obtain a Minister's order releasing the reservations. The Minister will be able to treat an allowance along the shore of a lake or river or a right-of-way as a reservation. The fee for the order will be prescribed by regulation and not set out in the Act.

SECTION 18. The existing section 67 is repealed as it is unnecessary. The new section 67 provides for a general penalty section in order to facilitate enforcement of the Act or regulations for which no penalty is now provided.

Bill 137

1988

An Act to amend the Public Lands Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of the *Public Lands Act*, being chapter 413 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

5.—(1) The Minister may appoint such officers to carry out and enforce this Act and the regulations as the Minister considers necessary. Appointment of officers

(2) Subject to subsection (4), an officer appointed under subsection (1) and any person accompanying that officer and acting under the officer's instructions may, at all reasonable times and upon producing proper identification, enter and inspect any private land for the purposes of this Act. Entry upon private land

(3) An officer appointed under section 4 of the *Forest Fires Prevention Act* shall be deemed to be an officer appointed under subsection (1). Officer appointed under R.S.O. 1980, c. 173

(4) An officer or any person accompanying the officer and acting under the officer's instructions shall not enter any room or place actually used as a dwelling without the consent of the occupier, except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*. Search warrant
R.S.O. 1980, c. 400

2.—(1) Subsection 13 (3) of the said Act is amended by striking out "\$500" in the eighth line and inserting in lieu thereof "\$5,000".

(2) Section 13 of the said Act is amended by adding thereto the following subsections:

(3a) An officer who finds a building or structure being erected or an improvement being made without the authority of a permit may order that work on the building, structure or improvement cease until a permit is obtained and any person Per diem penalty

continuing the work or causing the work to be continued in contravention of the order is guilty of an offence and on conviction is, in addition to any fine that may be imposed under subsection (3), liable to a fine of not less than \$200 for each day the work is continued in contravention of the order.

Order to
dismantle
and remove
building, etc.

(3b) Upon conviction of any person of an offence under this section, the court, in addition to the imposition of a fine, may order that person to dismantle and remove any building or structure erected or improvement made in contravention of this section within such time as the court orders and, if the person convicted fails to comply with the order, the Minister may cause the building, structure or improvement to be dismantled and removed and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person convicted.

3. The said Act is amended by adding thereto the following section:

Work permit
for work on
public lands

13a.—(1) Except in accordance with a work permit, no person shall,

- (a) carry on or cause to be carried on any logging, mineral exploration or industrial operation on public lands;
- (b) construct or place or cause to be constructed or placed any building, structure or thing on public lands;
- (c) clear any public lands or cause any public lands to be cleared;
- (d) dredge any shore lands or cause any shore lands to be dredged; or
- (e) fill any shore lands or cause any shore lands to be filled.

Conditions
attaching

(2) Every work permit is subject to the conditions set out therein.

Regulations

(3) The Lieutenant Governor in Council may make regulations,

- (a) governing the issuing, renewing and cancelling of work permits;

- (b) governing appeals from a refusal to issue or renew a permit, from a cancellation thereof or in respect of any conditions attaching to a work permit;
- (c) prescribing grounds for refusing to issue or to renew work permits;
- (d) prescribing conditions attaching to work permits and to any exemption from subsection (1);
- (e) prescribing fees payable for work permits or any classes thereof;
- (f) defining “shore lands” for the purpose of clauses (1) (d) and (e); and
- (g) exempting any person or class of person from any provision of subsection (1).

(4) Any regulation may be general or particular in its application. Idem

(5) An officer who finds that there is a contravention of subsection (1) may order that the activity constituting the contravention cease until a work permit authorizing the activity has been obtained and any person continuing the activity or causing the activity to be continued after the order has been made is guilty of an offence and on conviction is, in addition to any fine that may be imposed under subsection (6), liable to a fine of not less than \$200 for each day the activity is continued in contravention of the order. *Per diem penalty*

(6) Every person who contravenes any provision of subsection (1) or of a regulation made under subsection (3) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Offence

(7) Upon conviction of a person of an offence under this section, the court, in addition to the imposition of a fine, may order that person to, Order to dismantle and remove, etc.

- (a) cease all logging, mineral exploration or industrial operations carried on;
- (b) dismantle and remove any building, structure or improvement constructed or placed;
- (c) rehabilitate, in accordance with a plan approved by the Minister, any public lands cleared;

- (d) replace dredged material removed; or
- (e) remove any fill placed,

in contravention of subsection (1), within such time as the court orders and, if the person convicted fails to comply with the order, the Minister may cause to be done anything that the person convicted was ordered to do and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person convicted.

4. Section 16 of the said Act is repealed and the following substituted therefor:

Quit claim
letters patent

R.S.O. 1980,
c. 240

16.—(1) Where the Minister is satisfied that the right to bring an action on behalf of Her Majesty against a person for the recovery of land is barred by subsection 3 (1) of the *Limitations Act*, the Minister may direct the issue of quit claim letters patent in respect of the land to that person or to that person's predecessor in possession if the right of recovery was barred against that predecessor upon such conditions as the Minister considers proper.

Retroactive
effect

(2) Where quit claim letters patent are issued under subsection (1) to a person's predecessor in possession, the quit claim letters patent shall specify a date during the period of time that the predecessor had possession and the quit claim letters patent shall,

- (a) relate back to the date so specified; and
- (b) have the same effect as if issued at the date so specified.

5. Section 23 of the said Act is amended by adding thereto the following subsection:

Recovery of
cost and
expense

(4a) Any cost or expense incurred in the sale, disposition or destruction of a building or thing referred to in subsection (4) is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person responsible for the construction of the building or the placing of the thing on the land or, in the case of a building that is occupied, the occupier.

6. The said Act is further amended by adding thereto the following section:

23a. The Minister may make an order subject to such conditions as the Minister considers proper,

Restoration of rights in forfeited property, etc.

- (a) restoring to a person the right, title or interest in any improvement, building or thing forfeited under subsection 22 (1); or
- (b) declaring that any improvement, building or thing on public lands possessed or occupied without lawful authority is not the property of the Crown notwithstanding subsection 23 (4).

7. Section 25 of the said Act is repealed and the following substituted therefor:

25.—(1) No person shall deposit or cause to be deposited any material, substance or thing on public lands, whether or not the lands are covered with water or ice, except with the written consent of the Minister or an officer authorized by the Minister.

Unauthorized filling

(2) The Minister may remove any material, substance or thing deposited contrary to subsection (1), and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person who deposited the material, substance or thing or the person who caused it to be deposited.

Removal of material, etc.

8. Subsections 36 (2), (3), (4), (5) and (6) of the said Act are repealed and the following substituted therefor:

(2) If a Crown grant of public lands, a release under subsection 55 (5) or a grant under *The Canada Company's Lands Act, 1922* is given, the Minister shall forward the instrument by which the release or grant is given to the proper land registry office.

Crown grants release, grants of minerals registered in land registry offices
1922, c. 24

(3) Upon receipt of an instrument under subsection (2), the land registrar shall, without fee or other charge, register the instrument, note particulars of registration on a copy and forward the copy to the grantee at the address furnished by the Ministry.

Registration

9. The said Act is further amended by adding thereto the following section:

36a.—(1) In this section, "Crown" means Her Majesty the Queen in right of Ontario as represented by the Minister.

Definition

Certificate
that land is
public lands

(2) When the Crown becomes the registered owner of land that has been patented or otherwise disposed of or when land reverts to or vests in the Crown, the Minister may forward to the proper land registry office a certificate stating that the land is deemed to be public lands.

Registration

(3) The land registrar shall, without fee or charge, register every certificate received under subsection (2).

Effect of
registration

(4) Upon registration of a certificate under subsection (3),

R.S.O. 1980,
cc. 230, 445

(a) the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the land described in the certificate and the land registrar shall note that fact in the appropriate register or abstract index; and

(b) the land described in the certificate may be granted, sold, leased or otherwise dealt with in the same manner as other public lands.

Easements

(5) An easement that is appurtenant to or affects land described in a certificate registered under subsection (3) is not affected by registration of the certificate.

Restrictive
covenants

(6) For the purposes of this section, a restrictive covenant running with land is considered to be an easement.

Notice to
adjoining
land owners

(7) Before registering a certificate under subsection (3), the Minister shall give any person with a registered interest in land adjoining the land described in the certificate sixty days notice of the intention to register the certificate.

Notice from
adjoining
land owners

(8) Any person receiving a notice under subsection (7) who has acquired an interest in the land described in the certificate by possession or by making improvements may give notice of the interest to the Minister before the certificate is filed.

Amending
certificate

(9) If the Minister is satisfied that land described in a certificate is subject to an interest, the Minister shall amend the certificate to reflect the interest.

10. Section 37 of the said Act is amended by adding thereto the following subsection:

Exception

(2) Subsection (1) does not apply when a purchase is made of a right, title or interest in public lands for private use at a public auction or when the purchase is made for private use and the purchaser is selected by public draw.

11. Section 43 of the said Act is repealed and the following substituted therefor:

43. The Minister may enter into agreements for the sale or other disposition of land for agricultural purposes at such prices or rentals and subject to such conditions as the Minister may determine. Agreements
for
agricultural
lands

12. The said Act is further amended by adding thereto the following section:

44a. The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing the fee for any type of authority to use or enter upon public lands and facilities;
- (b) regulating the use of or the kinds of activities carried on upon public lands.

13. Section 53 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:

53. If public land was, before the 29th day of March, 1961, sold or located under the authority of any Act, the Minister may direct the issue of letters patent to the purchaser or locatee or any person claiming under or through the purchaser or locatee, Issue of
letters patent

.

14. Section 55 of the said Act is amended by adding thereto the following subsection:

(3a) Every provision contained in letters patent granting public lands for a summer resort location that, Idem

- (a) prohibits the cutting of pine timber, except for necessary building or clearing with the written permission of the Minister, and, in default, sets out penalties and exacts prices for cut timber; or
- (b) provides for the manner of disposal of cut timber,

is void.

15. Subsection 58 (5) of the said Act is repealed and the following substituted therefor:

Fee for
certificate

(5) An applicant for a certificate under subsection (4) shall pay the fee prescribed therefor by the regulations.

16. Section 63 of the said Act is repealed and the following substituted therefor:

Release of
road
reservations

63.—(1) If letters patent have been issued for land in respect of which there is a reservation referred to in section 62 and the Minister is of the opinion that the present and future needs of the locality as to roads are adequately provided for, the Minister shall, upon the owner of the affected land applying therefor and paying the fee prescribed therefor by the regulations, make an order releasing the land or any part thereof from the reservation.

Release of
reservation

(2) When the Minister is of the opinion that a reservation in letters patent reserving a right-of-way or a right of access to the shores of rivers, streams and lakes for vessels, boats and persons does not serve a useful purpose and is not required in the public interest and the owner of the land affected applies for a release from the reservation and pays the fee prescribed therefor by the regulations, the Minister shall make an order releasing the land or any part thereof from the reservation.

Power to
determine
reservation

(3) In respect of letters patent reserving or excepting a right-of-way or an allowance along the shore of a lake or river, the Minister may treat the reservation or exception as a reservation referred to in subsection (1) or (2) and issue the order under subsection (1) or (2).

Effect of
order

(4) An order made under this section releases the land described in the order from the reservation referred to in the order and may be registered in the proper land registry office.

17. Subsection 66 (2) of the said Act is repealed and the following substituted therefor:

Fee for
certificate

(2) An applicant for a certificate under subsection (1) shall pay the fee prescribed therefor by the regulations.

18. Section 67 of the said Act is repealed and the following substituted therefor:

Penalty not
otherwise
provided for

67. Except where otherwise provided, every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

19. This Act comes into force on the day it receives Royal Assent. Commence-
ment

20. The short title of this Act is the *Public Lands Amendment Act, 1988*. Short title





Bill 137

*(Chapter 50
Statutes of Ontario, 1988)*

An Act to amend the Public Lands Act

The Hon. V. Kerrio
Minister of Natural Resources

<i>1st Reading</i>	May 19th, 1988
<i>2nd Reading</i>	June 27th, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 137

1988

An Act to amend the Public Lands Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of the *Public Lands Act*, being chapter 413 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

5.—(1) The Minister may appoint such officers to carry out and enforce this Act and the regulations as the Minister considers necessary.

Appointment
of officers

(2) Subject to subsection (4), an officer appointed under subsection (1) and any person accompanying that officer and acting under the officer's instructions may, at all reasonable times and upon producing proper identification, enter and inspect any private land for the purposes of this Act.

Entry upon
private land

(3) An officer appointed under section 4 of the *Forest Fires Prevention Act* shall be deemed to be an officer appointed under subsection (1).

Officer
appointed
under
R.S.O. 1980,
c. 173

(4) An officer or any person accompanying the officer and acting under the officer's instructions shall not enter any room or place actually used as a dwelling without the consent of the occupier, except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

Search
warrant

R.S.O. 1980,
c. 400

2.—(1) Subsection 13 (3) of the said Act is amended by striking out “\$500” in the eighth line and inserting in lieu thereof “\$5,000”.

(2) Section 13 of the said Act is amended by adding thereto the following subsections:

(3a) An officer who finds a building or structure being erected or an improvement being made without the authority of a permit may order that work on the building, structure or improvement cease until a permit is obtained and any person

Per diem
penalty

continuing the work or causing the work to be continued in contravention of the order is guilty of an offence and on conviction is, in addition to any fine that may be imposed under subsection (3), liable to a fine of not less than \$200 for each day the work is continued in contravention of the order.

Order to
dismantle
and remove
building, etc.

(3b) Upon conviction of any person of an offence under this section, the court, in addition to the imposition of a fine, may order that person to dismantle and remove any building or structure erected or improvement made in contravention of this section within such time as the court orders and, if the person convicted fails to comply with the order, the Minister may cause the building, structure or improvement to be dismantled and removed and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person convicted.

3. The said Act is amended by adding thereto the following section:

Work permit
for work on
public lands

13a.—(1) Except in accordance with a work permit, no person shall,

- (a) carry on or cause to be carried on any logging, mineral exploration or industrial operation on public lands;
- (b) construct or place or cause to be constructed or placed any building, structure or thing on public lands;
- (c) clear any public lands or cause any public lands to be cleared;
- (d) dredge any shore lands or cause any shore lands to be dredged; or
- (e) fill any shore lands or cause any shore lands to be filled.

Conditions
attaching

(2) Every work permit is subject to the conditions set out therein.

Regulations

(3) The Lieutenant Governor in Council may make regulations,

- (a) governing the issuing, renewing and cancelling of work permits;

- (b) governing appeals from a refusal to issue or renew a permit, from a cancellation thereof or in respect of any conditions attaching to a work permit;
- (c) prescribing grounds for refusing to issue or to renew work permits;
- (d) prescribing conditions attaching to work permits and to any exemption from subsection (1);
- (e) prescribing fees payable for work permits or any classes thereof;
- (f) defining "shore lands" for the purpose of clauses (1) (d) and (e); and
- (g) exempting any person or class of person from any provision of subsection (1).

(4) Any regulation may be general or particular in its application. Idem

(5) An officer who finds that there is a contravention of subsection (1) may order that the activity constituting the contravention cease until a work permit authorizing the activity has been obtained and any person continuing the activity or causing the activity to be continued after the order has been made is guilty of an offence and on conviction is, in addition to any fine that may be imposed under subsection (6), liable to a fine of not less than \$200 for each day the activity is continued in contravention of the order. *Per diem penalty*

(6) Every person who contravenes any provision of subsection (1) or of a regulation made under subsection (3) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. Offence

(7) Upon conviction of a person of an offence under this section, the court, in addition to the imposition of a fine, may order that person to, Order to dismantle and remove, etc.

- (a) cease all logging, mineral exploration or industrial operations carried on;
- (b) dismantle and remove any building, structure or improvement constructed or placed;
- (c) rehabilitate, in accordance with a plan approved by the Minister, any public lands cleared;

(d) replace dredged material removed; or

(e) remove any fill placed,

in contravention of subsection (1), within such time as the court orders and, if the person convicted fails to comply with the order, the Minister may cause to be done anything that the person convicted was ordered to do and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person convicted.

4. Section 16 of the said Act is repealed and the following substituted therefor:

Quit claim
letters patent

R.S.O. 1980,
c. 240

16.—(1) Where the Minister is satisfied that the right to bring an action on behalf of Her Majesty against a person for the recovery of land is barred by subsection 3 (1) of the *Limitations Act*, the Minister may direct the issue of quit claim letters patent in respect of the land to that person or to that person's predecessor in possession if the right of recovery was barred against that predecessor upon such conditions as the Minister considers proper.

Retroactive
effect

(2) Where quit claim letters patent are issued under subsection (1) to a person's predecessor in possession, the quit claim letters patent shall specify a date during the period of time that the predecessor had possession and the quit claim letters patent shall,

(a) relate back to the date so specified; and

(b) have the same effect as if issued at the date so specified.

5. Section 23 of the said Act is amended by adding thereto the following subsection:

Recovery of
cost and
expense

(4a) Any cost or expense incurred in the sale, disposition or destruction of a building or thing referred to in subsection (4) is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person responsible for the construction of the building or the placing of the thing on the land or, in the case of a building that is occupied, the occupier.

6. The said Act is further amended by adding thereto the following section:

23a. The Minister may make an order subject to such conditions as the Minister considers proper,

Restoration
of rights in
forfeited
property, etc.

- (a) restoring to a person the right, title or interest in any improvement, building or thing forfeited under subsection 22 (1); or
- (b) declaring that any improvement, building or thing on public lands possessed or occupied without lawful authority is not the property of the Crown notwithstanding subsection 23 (4).

7. Section 25 of the said Act is repealed and the following substituted therefor:

25.—(1) No person shall deposit or cause to be deposited any material, substance or thing on public lands, whether or not the lands are covered with water or ice, except with the written consent of the Minister or an officer authorized by the Minister.

Unauthorized
filling

(2) The Minister may remove any material, substance or thing deposited contrary to subsection (1), and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person who deposited the material, substance or thing or the person who caused it to be deposited.

Removal of
material, etc.

8. Subsections 36 (2), (3), (4), (5) and (6) of the said Act are repealed and the following substituted therefor:

(2) If a Crown grant of public lands, a release under subsection 55 (5) or a grant under *The Canada Company's Lands Act, 1922* is given, the Minister shall forward the instrument by which the release or grant is given to the proper land registry office.

Crown grants
release,
grants of
minerals
registered in
land registry
offices
1922, c. 24

(3) Upon receipt of an instrument under subsection (2), the land registrar shall, without fee or other charge, register the instrument, note particulars of registration on a copy and forward the copy to the grantee at the address furnished by the Ministry.

Registration

9. The said Act is further amended by adding thereto the following section:

36a.—(1) In this section, "Crown" means Her Majesty the Queen in right of Ontario as represented by the Minister.

Definition

Certificate
that land is
public lands

(2) When the Crown becomes the registered owner of land that has been patented or otherwise disposed of or when land reverts to or vests in the Crown, the Minister may forward to the proper land registry office a certificate stating that the land is deemed to be public lands.

Registration

(3) The land registrar shall, without fee or charge, register every certificate received under subsection (2).

Effect of
registration

(4) Upon registration of a certificate under subsection (3),

R.S.O. 1980,
cc. 230, 445

(a) the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the land described in the certificate and the land registrar shall note that fact in the appropriate register or abstract index; and

(b) the land described in the certificate may be granted, sold, leased or otherwise dealt with in the same manner as other public lands.

Easements

(5) An easement that is appurtenant to or affects land described in a certificate registered under subsection (3) is not affected by registration of the certificate.

Restrictive
covenants

(6) For the purposes of this section, a restrictive covenant running with land is considered to be an easement.

Notice to
adjoining
land owners

(7) Before registering a certificate under subsection (3), the Minister shall give any person with a registered interest in land adjoining the land described in the certificate sixty days notice of the intention to register the certificate.

Notice from
adjoining
land owners

(8) Any person receiving a notice under subsection (7) who has acquired an interest in the land described in the certificate by possession or by making improvements may give notice of the interest to the Minister before the certificate is filed.

Amending
certificate

(9) If the Minister is satisfied that land described in a certificate is subject to an interest, the Minister shall amend the certificate to reflect the interest.

10. Section 37 of the said Act is amended by adding thereto the following subsection:

Exception

(2) Subsection (1) does not apply when a purchase is made of a right, title or interest in public lands for private use at a public auction or when the purchase is made for private use and the purchaser is selected by public draw.

11. Section 43 of the said Act is repealed and the following substituted therefor:

43. The Minister may enter into agreements for the sale or other disposition of land for agricultural purposes at such prices or rentals and subject to such conditions as the Minister may determine. Agreements
for
agricultural
lands

12. The said Act is further amended by adding thereto the following section:

44a. The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing the fee for any type of authority to use or enter upon public lands and facilities;
- (b) regulating the use of or the kinds of activities carried on upon public lands.

13. Section 53 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:

53. If public land was, before the 29th day of March, 1961, sold or located under the authority of any Act, the Minister may direct the issue of letters patent to the purchaser or locatee or any person claiming under or through the purchaser or locatee, Issue of
letters patent

.

14. Section 55 of the said Act is amended by adding thereto the following subsection:

(3a) Every provision contained in letters patent granting public lands for a summer resort location that, Idem

- (a) prohibits the cutting of pine timber, except for necessary building or clearing with the written permission of the Minister, and, in default, sets out penalties and exacts prices for cut timber; or
- (b) provides for the manner of disposal of cut timber,

is void.

15. Subsection 58 (5) of the said Act is repealed and the following substituted therefor:

Fee for
certificate

(5) An applicant for a certificate under subsection (4) shall pay the fee prescribed therefor by the regulations.

16. Section 63 of the said Act is repealed and the following substituted therefor:

Release of
road
reservations

63.—(1) If letters patent have been issued for land in respect of which there is a reservation referred to in section 62 and the Minister is of the opinion that the present and future needs of the locality as to roads are adequately provided for, the Minister shall, upon the owner of the affected land applying therefor and paying the fee prescribed therefor by the regulations, make an order releasing the land or any part thereof from the reservation.

Release of
reservation

(2) When the Minister is of the opinion that a reservation in letters patent reserving a right-of-way or a right of access to the shores of rivers, streams and lakes for vessels, boats and persons does not serve a useful purpose and is not required in the public interest and the owner of the land affected applies for a release from the reservation and pays the fee prescribed therefor by the regulations, the Minister shall make an order releasing the land or any part thereof from the reservation.

Power to
determine
reservation

(3) In respect of letters patent reserving or excepting a right-of-way or an allowance along the shore of a lake or river, the Minister may treat the reservation or exception as a reservation referred to in subsection (1) or (2) and issue the order under subsection (1) or (2).

Effect of
order

(4) An order made under this section releases the land described in the order from the reservation referred to in the order and may be registered in the proper land registry office.

17. Subsection 66 (2) of the said Act is repealed and the following substituted therefor:

Fee for
certificate

(2) An applicant for a certificate under subsection (1) shall pay the fee prescribed therefor by the regulations.

18. Section 67 of the said Act is repealed and the following substituted therefor:

Penalty not
otherwise
provided for

67. Except where otherwise provided, every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

19. This Act comes into force on the day it receives Royal Assent. Commence-
ment

20. The short title of this Act is the *Public Lands Amendment Act, 1988*. Short title

Bill 138

An Act to revise the Weed Control Act

The Hon. J. Riddell
*Minister of Agriculture
and Food*

1st Reading **May 25th, 1988**

2nd Reading

3rd Reading

Royal Assent

Projet de loi 138

Loi portant révision de la Loi sur la destruction des mauvaises herbes

L'honorable J. Riddell
*ministre de l'Agriculture
et de l'Alimentation*

1^{re} lecture **25 mai 1988**

2^e lecture

3^e lecture

sanction royale

EXPLANATORY NOTES

The Bill replaces the *Weed Control Act*. Among the principal features of the Bill are the following:

1. There is no longer a Director. The Minister, rather than the Lieutenant Governor in Council, now appoints the chief inspector and district weed inspectors. (Section 2)
2. The obligation to report the names and addresses of inspectors to the chief inspector has been expanded to include all municipalities. (Sections 7 and 9)
3. The power to designate local weeds as noxious weeds has been extended to all municipalities. (Subsection 10 (1))
4. An inspector who is refused access to land or buildings or is otherwise obstructed in carrying out an inspection under the Act may now apply to a justice of the peace for a warrant. (Subsections 12 (3), (4) and (5))
5. The methods of service of an order to destroy weeds have been expanded to include certified or first class mail in addition to registered mail. (Subsection 13 (3))
6. The period for appealing an order has been increased from four to seven days. (Subsection 13 (6))

The appeal must be in writing. In the current Act, the appeal may be made orally or by telephone.

7. The penalties have been increased to not less than \$500 and not more than \$1,000 for a first offence and not less than \$1,000 and not more than \$2,000 for a subsequent offence. Currently, the Act provides for penalties of not more than \$50 for a first offence and not less than \$50 nor more than \$100 for a subsequent offence. (Section 23)
8. The Lieutenant Governor in Council may make regulations prescribing the measures that shall be taken to prevent the use of bird feed that is infested with weed seeds. (Section 24)

NOTES EXPLICATIVES

Le projet de loi remplace la *Loi sur la destruction des mauvaises herbes*. Voici quelques points saillants de ce projet de loi :

1. Il n'y a plus de directeur. C'est désormais le ministre, et non le lieutenant-gouverneur en conseil, qui nomme l'inspecteur en chef et les inspecteurs de district des mauvaises herbes. (Article 2)
2. L'obligation de communiquer les nom et adresse des inspecteurs à l'inspecteur en chef a été étendue à toutes les municipalités. (Articles 7 et 9)
3. Le pouvoir de désigner des mauvaises herbes locales comme mauvaises herbes nuisibles a été étendu à toutes les municipalités. (Paragraphe 10 (1))
4. Un inspecteur qui se voit refuser l'accès à un terrain ou un bâtiment ou qui se voit empêché d'une autre manière d'effectuer une inspection en vertu de la présente loi peut désormais demander un mandat à un juge de paix. (Paragraphe 12 (3), (4) et (5))
5. Le mode de signification d'une ordonnance de destruction des mauvaises herbes comprend désormais, outre le courrier recommandé, le courrier certifié et le courrier de première classe. (Paragraphe 13 (3))
6. Le délai prévu pour interjeter appel d'une ordonnance de destruction des mauvaises herbes a été prolongé et passe de quatre à sept jours. (Paragraphe 13 (6))

On doit interjeter appel par écrit. La loi actuelle permet de le faire oralement ou par téléphone.

7. Les amendes ont été portées à 500 \$ au moins et 1 000 \$ au plus à l'égard d'une première infraction et à 1 000 \$ au moins et 2 000 \$ au plus à l'égard d'une infraction subséquente. La loi prévoit actuellement des amendes d'au plus 50 \$ à l'égard d'une première infraction et de 50 \$ au moins et 100 \$ au plus à l'égard d'une infraction subséquente. (Article 23)
8. Le lieutenant-gouverneur en conseil peut, par règlement, prescrire les mesures à prendre pour empêcher l'utilisation de nourriture pour oiseaux infestée de graines de mauvaises herbes. (Article 24)

Bill 138**1988****An Act to revise the
Weed Control Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions**1. In this Act,**

- | | |
|---|---|
| “inspecteur de secteur des mauvaises herbes” | “area weed inspector” means an area weed inspector appointed under section 6; |
| “inspecteur en chef” | “chief inspector” means the chief inspector appointed under section 2; |
| “inspecteur de district des mauvaises herbes” | “district weed inspector” means a district weed inspector appointed under section 2; |
| “inspecteur” | “inspector” means an area weed inspector, district weed inspector or municipal weed inspector; |
| “mauvaise herbe locale” | “local weed” means a plant designated under section 10 as a local weed; |
| “ministre” | “Minister” means the Minister of Agriculture and Food; |
| “inspecteur municipal des mauvaises herbes” | “municipal weed inspector” means a municipal weed inspector appointed under section 8; |
| “mauvaise herbe nuisible” | “noxious weed” means a plant that is deemed to be a noxious weed under subsection 10 (2) or designated as a noxious weed under clause 24 (a); |
| “propriétaire” | “owner” means the person shown as the owner of land on the last revised assessment roll of the municipality in which the land is located; |
| “prescrit” | “prescribed” means prescribed by the regulations; |

Projet de loi 138**1988****Loi portant révision de la
Loi sur la destruction des mauvaises herbes**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 Les définitions qui suivent s'appliquent à la présente loi.	Définitions
«graine de mauvaise herbe» Graine d'une mauvaise herbe nuisible.	«weed seed»
«inspecteur» Inspecteur de secteur des mauvaises herbes, inspecteur de district des mauvaises herbes ou inspecteur municipal des mauvaises herbes.	«inspector»
«inspecteur de district des mauvaises herbes» Inspecteur de district des mauvaises herbes nommé en vertu de l'article 2.	«district weed inspector»
«inspecteur de secteur des mauvaises herbes» Inspecteur de secteur des mauvaises herbes nommé en vertu de l'article 6.	«area weed inspector»
«inspecteur en chef» L'inspecteur en chef nommé en vertu de l'article 2.	«chief inspector»
«inspecteur municipal des mauvaises herbes» Inspecteur municipal des mauvaises herbes nommé en vertu de l'article 8.	«municipal weed inspector»
«mauvaise herbe locale» Plante désignée comme mauvaise herbe locale en vertu de l'article 10.	«local weed»
«mauvaise herbe nuisible» Plante réputée une mauvaise herbe nuisible en vertu du paragraphe 10 (2) ou désignée comme telle en vertu de l'alinéa 24 a).	«noxious weed»
«ministre» Le ministre de l'Agriculture et de l'Alimentation.	«Minister»
«prescrit» Prescrit par les règlements.	«prescribed»
«propriétaire» La personne figurant comme propriétaire d'un terrain au dernier rôle d'évaluation révisé de la municipalité où le terrain est situé.	«owner»

“règlements” “regulations” means the regulations made under this Act;

“graine de
mauvaise
herbe”

“weed seed” means the seed of a noxious weed.

Chief
inspector,
district weed
inspector

2. The Minister may appoint a chief inspector and a district weed inspector for any district designated in the appointment.

Duty to
destroy
noxious
weeds

3. Every person in possession of land shall destroy all noxious weeds on it.

Persons
deemed in
possession

4. For the purposes of this Act, the owner of land shall be deemed, unless the contrary is proved, to be the person in possession of it.

Road
authorities
deemed in
possession of
roads
R.S.O. 1980,
c. 421

5. For the purposes of section 3, every road authority within the meaning of the *Public Transportation and Highway Improvement Act* shall be deemed to be the person in possession of the land under its jurisdiction.

Appointment
of inspectors

6.—(1) The council of every county, district municipality and regional municipality shall by by-law appoint one or more persons as area weed inspectors to enforce this Act in the area within the council's jurisdiction and fix their remuneration or other compensation.

Division into
areas

(2) The council may divide the county, district municipality or regional municipality into areas and appoint one or more area weed inspectors for each area.

Failure to
appoint
inspectors

(3) If a council fails to appoint an area weed inspector, the Minister may appoint the area weed inspector and fix his or her remuneration or other compensation.

Minister to
notify council
of
appointment

(4) The Minister shall notify the council of the appointment in writing and the treasurer of the municipality shall pay the remuneration or other compensation so fixed to the area weed inspector.

Clerk to
notify chief
inspector of
appointment

7.—(1) The clerk of each county, district municipality and regional municipality shall, before the 1st day of April in each year, give the chief inspector a written notice indicating the name and address of every area weed inspector and the area for which the appointment is made.

Idem

(2) If the council of a county, district municipality or regional municipality passes a by-law appointing an area weed

«règlements» Les règlements pris en application de la présente loi. «regulations»

2 Le ministre peut nommer un inspecteur en chef et un inspecteur de district des mauvaises herbes pour tout district désigné dans la nomination. Inspecteur en chef et inspecteur de district des mauvaises herbes

3 La personne en possession d'un terrain détruit toutes les mauvaises herbes nuisibles qui s'y trouvent. Obligation de détruire les mauvaises herbes nuisibles

4 Pour l'application de la présente loi, le propriétaire d'un terrain est la personne réputée en possession du terrain, sauf preuve du contraire. Personne réputée en possession du terrain

5 Pour l'application de l'article 3, les offices de la voirie, au sens de la *Loi sur l'aménagement des routes et des transports en commun*, sont réputés les personnes en possession des terrains relevant de leur compétence. Les offices de la voirie réputés en possession de routes L.R.O. 1980, chap. 421

6 (1) Le conseil de chaque comté, municipalité de district et municipalité régionale nomme, par voie de règlement municipal, un ou plusieurs inspecteurs de secteur des mauvaises herbes chargés de l'exécution de la présente loi dans le territoire qui relève de la compétence du conseil et fixe leur rémunération ou autre rétribution. Nomination d'inspecteurs

(2) Le conseil peut diviser le comté, la municipalité de district ou la municipalité régionale en secteurs et nommer un ou plusieurs inspecteurs de secteur des mauvaises herbes pour chaque secteur. Division en secteurs

(3) Si le conseil ne nomme pas d'inspecteur de secteur des mauvaises herbes, le ministre peut nommer cet inspecteur et fixer sa rémunération ou autre rétribution. Nomination d'inspecteurs par le ministre

(4) Le ministre signifie par écrit cette nomination au conseil, et le trésorier de la municipalité verse à l'inspecteur de secteur des mauvaises herbes la rémunération ou autre rétribution ainsi fixée. Signification de la nomination au conseil

7 (1) Le secrétaire du comté, de la municipalité de district ou de la municipalité régionale donne à l'inspecteur en chef, avant le 1^{er} avril de chaque année, un avis écrit indiquant le nom et l'adresse de chaque inspecteur de secteur des mauvaises herbes et le secteur qui relève de sa compétence. Le secrétaire communique les nominations à l'inspecteur en chef

(2) Si le conseil d'un comté, d'une municipalité de district ou d'une municipalité régionale adopte un règlement municipi- Idem

inspector on or after the 1st day of April, the clerk shall within seven days after the passing of the by-law give the chief inspector a written notice indicating the name and address of every area weed inspector and the area for which the appointment is made.

Idem

(3) If an area weed inspector resigns or the council revokes the appointment, the clerk of the municipality shall within seven days of the resignation or revocation give the chief inspector written notice of it.

Appointment
of municipal
weed
inspectors

8.—(1) The council of any municipality not referred to in subsection 6 (1) may by by-law appoint one or more persons as municipal weed inspectors to enforce this Act in the area within the council's jurisdiction and fix their remuneration or other compensation.

Co-operation
with area
weed
inspector

(2) Persons who are appointed as municipal weed inspectors shall carry out their duties in co-operation with the area weed inspector.

Joint
jurisdiction

(3) Even though a municipal weed inspector has been appointed by a municipality, the area weed inspector may, when he or she considers it necessary, exercise his or her powers under this Act in the municipality.

Clerk to
notify chief
inspector of
appointment

9.—(1) The clerk of each municipality not referred to in subsection 6 (1) shall, before the 1st day of April in each year, give the chief inspector a written notice indicating the name and address of every municipal weed inspector for the area within its jurisdiction and the area for which the appointment is made.

Idem

(2) If the council of any municipality not referred to in subsection 6 (1) passes a by-law appointing a municipal weed inspector on or after the 1st day of April, the clerk shall within seven days after the passing of the by-law give the chief inspector a written notice indicating the name and address of every municipal weed inspector and the area for which the appointment is made.

Idem

(3) If a municipal weed inspector resigns or the council revokes the appointment, the clerk of the municipality shall within seven days of the resignation or revocation give the chief inspector written notice of it.

pal pour nommer un inspecteur de secteur des mauvaises herbes le 1^{er} avril ou après cette date, le secrétaire donne à l'inspecteur en chef, dans les sept jours suivant l'adoption du règlement municipal, un avis écrit indiquant le nom et l'adresse de chaque inspecteur de secteur des mauvaises herbes et le secteur qui relève de sa compétence.

(3) Si un inspecteur de secteur des mauvaises herbes démissionne ou que le conseil révoque sa nomination, le secrétaire de la municipalité en donne un avis écrit à l'inspecteur en chef dans les sept jours suivant la démission ou la révocation. Idem

8 (1) Le conseil d'une municipalité non visée au paragraphe 6 (1) peut, par voie de règlement municipal, nommer un ou plusieurs inspecteurs municipaux des mauvaises herbes chargés de l'exécution de la présente loi dans le territoire qui relève de la compétence du conseil et fixer leur rémunération ou autre rétribution. Nomination d'inspecteurs municipaux des mauvaises herbes

(2) Quiconque est nommé inspecteur municipal des mauvaises herbes exerce ses fonctions en collaboration avec l'inspecteur de secteur des mauvaises herbes. Collaboration avec l'inspecteur de secteur des mauvaises herbes

(3) Même si la municipalité a nommé un inspecteur municipal des mauvaises herbes, l'inspecteur de secteur des mauvaises herbes peut, s'il le juge nécessaire, exercer dans la municipalité les pouvoirs que lui confère la présente loi. Compétence conjointe

9 (1) Le secrétaire de chaque municipalité non visée au paragraphe 6 (1) donne à l'inspecteur en chef, avant le 1^{er} avril de chaque année, un avis écrit indiquant le nom et l'adresse de chaque inspecteur municipal des mauvaises herbes et le secteur qui relève de sa compétence. Le secrétaire communique la nomination à l'inspecteur en chef

(2) Si le conseil d'une municipalité non visée au paragraphe 6 (1) adopte un règlement municipal pour nommer un inspecteur municipal des mauvaises herbes le 1^{er} avril ou après cette date, le secrétaire donne à l'inspecteur en chef, dans les sept jours suivant l'adoption de ce règlement municipal, un avis écrit indiquant le nom et l'adresse de chaque inspecteur municipal des mauvaises herbes et le secteur qui relève de sa compétence. Idem

(3) Si un inspecteur municipal des mauvaises herbes démissionne ou que le conseil révoque sa nomination, le secrétaire de la municipalité en donne un avis écrit à l'inspecteur en chef dans les sept jours suivant la démission ou la révocation. Idem

Designation
of local weed
by municipal
by-law

10.—(1) A council of a county, district municipality or regional municipality that has appointed an area weed inspector or a council of a municipality that has appointed a municipal weed inspector may by by-law designate as a local weed any plant that is not a noxious weed.

Effect of
designation

(2) The by-law may apply in respect of the whole or any part of the municipality and, for the purposes of this Act, the plant that is designated shall be deemed to be a noxious weed within the area to which the by-law applies.

Approval of
by-laws

(3) The by-law does not take effect until it is approved by the Minister.

Inspectors in
territory
without
municipal
organization
R.S.O. 1980,
c. 482

11.—(1) Road commissioners appointed under the *Statute Labour Act* in territory without municipal organization shall have the powers of an inspector.

Expenses for
enforcement
collectable
under
R.S.O. 1980,
c. 482

(2) This Act applies in the case of territory without municipal organization in the same manner as in the case of a municipality, except that any sums payable by a person liable for expenses incurred or remuneration paid in enforcing this Act are collectable in the manner provided in the *Statute Labour Act* with respect to the enforcement of the payment of charges for statute labour or its commutation.

Powers of
inspectors

12.—(1) For the purpose of searching for noxious weeds or weed seeds, an inspector may at any time between sunrise and sunset enter upon any land and buildings, except a dwelling house, in the area within his or her jurisdiction and inspect the land, buildings and any implements, machinery, vehicles and crops or other plants.

Identification
to be
provided

(2) An inspector shall, upon request, show proper identification to the owner or occupier of the land or building being inspected.

Application
for warrant

(3) If an inspector is denied entry or access to buildings or land or is obstructed while carrying out an inspection, the inspector may apply to a justice of the peace for a warrant.

Issuing of
warrant

(4) If a justice of the peace is satisfied on evidence upon oath that it is necessary for an inspector to enter any buildings or land for the purpose of this Act, the justice of the peace may issue a warrant authorizing an inspector to enter the buildings or land specified in the warrant, together with such police officers as the inspector calls upon to assist him or her.

10 (1) Le conseil d'un comté, d'une municipalité de district ou d'une municipalité régionale qui a nommé un inspecteur de secteur des mauvaises herbes ou le conseil d'une municipalité qui a nommé un inspecteur municipal des mauvaises herbes peut, par voie de règlement municipal, désigner une plante qui n'est pas une mauvaise herbe nuisible comme mauvaise herbe locale.

Désignation
d'une mau-
vaise herbe
locale par
règlement
municipal

(2) Le règlement municipal peut s'appliquer à la totalité ou à une partie du territoire de la municipalité. Pour l'application de la présente loi, la plante désignée comme mauvaise herbe locale est réputée une mauvaise herbe nuisible dans le secteur auquel s'applique le règlement municipal.

Portée de la
désignation

(3) Le règlement municipal n'entre en vigueur qu'après son approbation par le ministre.

Approbation
des
règlements
municipaux

11 (1) Les administrateurs de la voirie nommés en vertu de la *Loi sur les corvées légales* dans des territoires non érigés en municipalité possèdent les mêmes pouvoirs qu'un inspecteur.

Inspecteurs
dans les terri-
toires non
érigés en
municipalité
L.R.O. 1980,
chap. 482

(2) La présente loi s'applique à l'égard d'un territoire non érigé en municipalité de la même façon qu'à l'égard d'une municipalité. Toutefois, les sommes dues par la personne redevable des frais engagés ou de la rémunération payée pour l'exécution de la présente loi sont recouvrables de la façon prévue dans la *Loi sur les corvées légales* en ce qui concerne l'exécution du paiement des frais de corvée légale ou le rachat de ces frais.

Dépenses
d'exécution
recouvrables
en vertu du
chap. 482 des
L.R.O. de
1980

12 (1) Entre le lever et le coucher du soleil, l'inspecteur peut pénétrer à tout moment sur un terrain ou dans un bâtiment, sauf s'il s'agit d'un logement, situé dans le secteur qui relève de sa compétence et inspecter le terrain, le bâtiment et tout outillage, machine, véhicule et récolte ou autres plantes pour rechercher des mauvaises herbes nuisibles ou des graines de mauvaises herbes.

Pouvoirs de
l'inspecteur

(2) Sur demande, l'inspecteur montre ses pièces d'identité au propriétaire ou à l'occupant du terrain ou du bâtiment qui fait l'objet de l'inspection.

Pièces
d'identité

(3) L'inspecteur qui se voit refuser l'entrée ou l'accès d'un bâtiment ou d'un terrain ou qui est entravé pendant qu'il effectue une inspection peut demander un mandat à un juge de paix.

Demande de
mandat

(4) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il est nécessaire qu'un ins-

Mandat

Application
without
notice

(5) A justice of the peace may receive and consider an application for a warrant without notice to the owner or occupier of the buildings or land.

Order for
destruction of
weeds

13.—(1) An inspector who finds noxious weeds or weed seeds on land in the area within his or her jurisdiction may order the person in possession of the land to destroy the noxious weeds or weed seeds.

Time for
destruction of
weeds

(2) The order shall be in the prescribed form and shall specify a time of at least seven days, excluding Saturdays and holidays, from the date of the service of the order within which the noxious weeds or weed seeds shall be destroyed.

Service of
order

(3) The order shall be served upon every person named in it,

(a) by personal service; or

(b) by mailing a copy of the order by prepaid first class mail, by registered mail or by certified mail to the last address for service provided by the person or, if no such address has been provided, to the person's address last noted on the tax assessment roll or, if none, to the person's last known address.

Effective
date of
service

(4) Service under clause (3) (b) is effective on the seventh day after the order is mailed.

Service on
owner and
person in
possession

(5) If there is evidence that the person in possession of land is not its owner, the order shall be served on both the owner and the person in possession.

Appeal to
chief
inspector

(6) A person who is served with an order under subsection (5) may, within seven days after service, appeal the order or any requirement contained in it to the chief inspector, giving reasons for the appeal.

Written
appeal

(7) The appeal and reasons shall be in writing.

pecteur pénètre dans un bâtiment ou sur un terrain pour l'application de la présente loi peut décerner un mandat qui autorise l'inspecteur, ainsi que les agents de police auxquels celui-ci demande de l'aider, à pénétrer dans le bâtiment ou sur le terrain précisé dans le mandat.

(5) Le juge de paix peut recevoir et étudier une demande de mandat sans préavis au propriétaire ou à l'occupant du bâtiment ou du terrain.

Demande
sans préavis

13 (1) L'inspecteur qui trouve, sur un terrain situé dans le secteur qui relève de sa compétence, des mauvaises herbes nuisibles ou des graines de mauvaises herbes, peut ordonner à la personne en possession du terrain de les détruire.

Ordre de
destruction de
mauvaises
herbes

(2) L'ordre est rédigé selon la formule prescrite et précise le délai dans lequel les mauvaises herbes nuisibles ou les graines de mauvaises herbes doivent être détruites. Ce délai est d'au moins sept jours, à l'exclusion des samedis et jours fériés, à partir de la date de signification de l'ordre.

Délai accordé
pour la destruction de
mauvaises
herbes

(3) L'ordre est signifié à toute personne dont le nom y figure de l'une des façons suivantes :

Signification
de l'ordre

a) à personne;

b) par l'envoi d'un exemplaire de l'ordre par courrier affranchi de première classe, par courrier recommandé ou par courrier certifié au dernier domicile élu de cette personne ou, si cette adresse n'a pas été fournie, à la dernière adresse figurant au rôle d'évaluation des impôts pour cette personne ou, à défaut, à sa dernière adresse connue.

(4) La signification aux termes de l'alinéa (3) b) est valide le septième jour suivant la date de mise à la poste de l'ordre.

Date de validité de la
signification

(5) S'il existe des preuves que la personne en possession du terrain n'en est pas le propriétaire, l'ordre est signifié au propriétaire et à la personne en possession du terrain.

Signification
au propriétaire et à la
personne en
possession du
terrain

(6) La personne qui reçoit signification d'un ordre aux termes du paragraphe (5) peut, dans les sept jours de la signification, interjeter appel de l'ordre ou d'une disposition de celui-ci devant l'inspecteur en chef en motivant l'appel.

Appel devant
l'inspecteur
en chef

(7) L'appel est interjeté par écrit. Les motifs sont également donnés par écrit.

Appel écrit

- Parties (8) The appellant, the inspector who made the order and such other persons as the chief inspector may specify are parties to the appeal.
- Examination of land (9) The chief inspector may, in the presence of the parties or after affording them an opportunity to be present, view and examine land in relation to which the order appealed from is made and may base his or her decision upon the evidence adduced by the parties and on the view and examination.
- Decision of chief inspector (10) After hearing an appeal under this section, the chief inspector may confirm or revoke the order or may make a new order in its place.
- Service of order (11) The chief inspector's order shall be served in accordance with subsections (3), (4) and (5).
- Appeal (12) The chief inspector's order may be appealed to the Divisional Court within thirty days of its making under subsection (10).
- Obstruction of inspectors **14.** No person shall hinder or obstruct an inspector in the course of his or her duties, refuse to furnish the inspector with information or furnish him or her with false information.
- Failure to comply with order **15.**—(1) If an order served under section 13 is not complied with, the inspector may cause the noxious weeds or weed seeds to be destroyed in the prescribed manner.
- Expenses of inspectors (2) Inspectors shall keep a record of the expenses incurred under subsection (1) with respect to each parcel of land.
- Statement of expenses to be served on owner and person in possession of land (3) The expenses shall be submitted to the clerk of the municipality who shall have a statement of the expenses and a notice requesting payment served on the person in possession of the land and on its owner.
- Service of statement and notice (4) The statement and notice shall be served in the same manner as an order under section 13.
- Failure to pay (5) If the person upon whom a statement and notice were served fails to pay the amount set out in the statement within fifteen days after the service of the notice, the clerk shall present the statement to the council of the municipality in which the land is located, and the council shall order the amount to be paid out of the general funds of the municipality.

(8) L'appelant, l'inspecteur qui a donné l'ordre et les autres personnes que l'inspecteur en chef peut désigner sont parties à l'appel.

Parties

(9) L'inspecteur en chef peut, en présence des parties ou après leur avoir donné la possibilité d'être présentes, inspecter le terrain visé par l'ordre qui fait l'objet de l'appel et rendre une décision fondée sur les preuves fournies par les parties et sur cette inspection.

Examen du terrain

(10) Après avoir entendu l'appel interjeté en vertu du présent article, l'inspecteur en chef peut confirmer ou révoquer l'ordre, ou le remplacer par un nouvel ordre.

Décision de l'inspecteur en chef

(11) L'ordre de l'inspecteur en chef est signifié conformément aux paragraphes (3), (4) et (5).

Signification de l'ordre

(12) Il peut être interjeté appel de la décision de l'inspecteur en chef devant la Cour divisionnaire dans les trente jours suivant celui où l'ordre a été donné en vertu du paragraphe (10).

Appel

14 Nul ne doit gêner ni entraver un inspecteur dans l'exercice de ses fonctions, refuser de lui fournir des renseignements ou lui fournir de faux renseignements.

Entrave à l'inspection

15 (1) Si un ordre signifié aux termes de l'article 13 n'est pas exécuté, l'inspecteur peut faire détruire les mauvaises herbes nuisibles ou les graines de mauvaises herbes de la façon prescrite.

Défaut d'exécution de l'ordre

(2) Les inspecteurs tiennent un état des dépenses qu'ils engagent en vertu du paragraphe (1) à l'égard de chaque parcelle.

Dépenses engagées par l'inspecteur

(3) L'état des dépenses est soumis au secrétaire de la municipalité qui fait signifier à la personne en possession du terrain et au propriétaire de celui-ci un relevé des dépenses accompagné d'une demande de paiement.

Signification du relevé des dépenses au propriétaire et à la personne en possession du terrain

(4) Le relevé des dépenses et la demande de paiement sont signifiés de la même façon que l'ordre prévu à l'article 13.

Mode de signification du relevé

(5) Si la personne à qui sont signifiés le relevé et la demande ne paie pas le montant figurant sur le relevé dans un délai de quinze jours après la signification de la demande, le secrétaire présente le relevé des dépenses au conseil de la municipalité où est situé le terrain. Le conseil ordonne de prélever le montant du remboursement sur les fonds d'administration de la municipalité.

Défaut de paiement

Collection of costs

(6) The amount paid by the municipality shall be deemed to be taxes and shall be added to the collector's roll against the respective parcels concerned and collected in the same manner and with the same priorities as municipal taxes.

Destruction of weeds

16.—(1) Despite section 13, the council of any city, town, village or township may direct any of its municipal weed inspectors or, if there are none, the area weed inspectors to cause noxious weeds or weed seeds to be destroyed in the prescribed manner on all or part of any lot shown on a registered plan of subdivision and on lots not exceeding 10 acres that are not shown on such a plan.

Notice requirement

(2) Before noxious weeds or weed seeds are destroyed, the council shall publish notice of its intent to have the noxious weeds or weed seeds destroyed in a newspaper having general circulation in the municipality.

Report of inspector

(3) The inspector shall report to the clerk of the municipality the amount of the expenses incurred under this section with respect to each parcel of land.

Statement of expenses to be served on owner and person in possession of land

(4) The clerk of the municipality shall have a statement of the expenses and a notice requesting payment served on the person in possession of the land and on its owner.

Service of statement and notice

(5) The statement and notice shall be served in the same manner as an order under section 13.

Failure to pay

(6) If the person upon whom a statement and notice were served fails to pay the amount set out in the statement within fifteen days after the service of the notice, the clerk shall present the statement to the council of the municipality in which the land is located, and the council shall order the amount to be paid out of the general funds of the municipality.

Collection of costs

(7) The amount paid by the municipality shall be deemed to be taxes and shall be added to the collector's roll against the respective parcels concerned and collected in the same manner and with the same priorities as municipal taxes.

Application for refund, etc.

17. A person may apply to the council for the cancellation, reduction or refund of an amount levied in the year with respect to orders for weed control and is entitled to make an appeal to the Assessment Review Board in the same manner as for taxes under section 496 of the *Municipal Act*.

(6) Le montant payé par la municipalité est réputé constituer un impôt et est ajouté au rôle de recouvrement des impôts municipaux relativement aux parcelles respectives concernées. Son recouvrement s'effectue de la même façon et selon les mêmes priorités que celui des impôts municipaux.

Recouvrement
des frais

16 (1) Malgré l'article 13, le conseil d'une cité, d'une ville, d'un village ou d'un canton, peut ordonner à un de ses inspecteurs municipaux des mauvaises herbes ou, à défaut de ceux-ci, aux inspecteurs de secteur des mauvaises herbes, de faire détruire des mauvaises herbes nuisibles ou des graines de mauvaises herbes de la façon prescrite dans tout ou partie d'un lot qui figure sur un plan enregistré de lotissement, ainsi que dans des lots dont la superficie ne dépasse pas 10 acres et qui ne figurent pas sur un tel plan.

Destruction
des mauvaises
herbes

(2) Avant que des mauvaises herbes nuisibles ou des graines de mauvaises herbes ne soient détruites, le conseil publie un avis de son intention de les faire détruire dans un journal généralement lu dans la municipalité.

Publication
d'un avis

(3) L'inspecteur présente au secrétaire de la municipalité un rapport sur les dépenses engagées en vertu du présent article à l'égard de chaque parcelle.

Rapport de
l'inspecteur

(4) Le secrétaire de la municipalité fait signifier à la personne en possession du terrain et au propriétaire de celui-ci un relevé des dépenses accompagné d'une demande de paiement.

Signification
du relevé des
dépenses au
propriétaire et
à la personne
en possession
du terrain

(5) Le relevé des dépenses et la demande de paiement sont signifiés de la même façon que l'ordre prévu à l'article 13.

Mode de
signification

(6) Si la personne à qui sont signifiés le relevé et la demande ne paie pas le montant figurant sur le relevé dans un délai de quinze jours après la signification de la demande, le secrétaire présente le relevé des dépenses au conseil de la municipalité où est situé le terrain. Le conseil ordonne de prélever le montant du remboursement sur les fonds d'administration de la municipalité.

Défaut de
paiement

(7) Le montant payé par la municipalité est réputé constituer un impôt et est ajouté au rôle de recouvrement des impôts municipaux relativement aux parcelles respectives concernées. Son recouvrement s'effectue de la même façon et selon les mêmes priorités que celui des impôts municipaux.

Recouvrement
des frais

17 Quiconque peut présenter au conseil une demande d'annulation, de réduction ou de remboursement d'un impôt levé au cours de l'année relativement à des ordres de destruc-

Demande de
rembourse-
ment

Notice
requiring
noxious
weeds and
weed seeds
to be
destroyed

18.—(1) A district weed inspector who finds noxious weeds or weed seeds on any land owned by or under the control of a municipality within his or her district may deliver or send by prepaid first class mail to the clerk of the municipality a notice requiring the noxious weeds or weed seeds to be destroyed before a date specified in the notice.

Failure to
comply with
notice

(2) If the notice is not complied with, the district weed inspector may cause the noxious weeds or weed seeds to be destroyed in the prescribed manner.

Recovery of
expenses

(3) The expenses incurred by the district weed inspector under subsection (2) shall be paid by the municipality concerned and are recoverable in any court of competent jurisdiction by the Minister in the name of Her Majesty as a debt owed to the Crown.

Certificate
proof of
authority

(4) In any court action, the certificate purporting to be signed by the Minister as to the amount of the expenses is conclusive proof of the amount without proof of the Minister's authority or signature.

Prohibition

19. No person shall deposit or permit to be deposited any noxious weeds or weed seeds in any place where they might grow or spread.

Agricultural
machines

20. If the moving of a machine used for agricultural purposes is likely to cause noxious weeds or weed seeds to grow or spread, no person shall move the machine or cause it to be moved without first removing from it all seeds and other residue.

Grain
elevators,
etc.

21. A person in charge of a grain elevator, seed-cleaning plant or other grain-cleaning or grain-grinding plant shall dispose of all refuse containing weed seeds in a manner that will prevent them from growing or spreading.

Exception

22. Sections 3, 13, 16 and 18 do not apply to noxious weeds or weed seeds that are far enough away from any land used for agricultural or horticultural purposes that they do not interfere with that use.

tion des mauvaises herbes, et a le droit d'interjeter appel devant la Commission de révision de l'évaluation foncière, de la même façon que pour les impôts aux termes de l'article 496 de la *Loi sur les municipalités*.

L.R.O. 1980,
chap. 302

18 (1) L'inspecteur de district des mauvaises herbes qui trouve des mauvaises herbes nuisibles ou des graines de mauvaises herbes sur un terrain dont une municipalité située dans le district soumis à sa compétence est propriétaire ou a le contrôle peut remettre ou envoyer par courrier affranchi de première classe au secrétaire de la municipalité un avis exigeant leur destruction avant la date qu'il précise.

Avis exigeant la destruction de mauvaises herbes et de graines de mauvaises herbes

(2) Si l'avis n'est pas exécuté, l'inspecteur de district des mauvaises herbes peut faire détruire les mauvaises herbes nuisibles ou les graines de mauvaises herbes de la façon prescrite.

Défaut d'exécution de l'avis

(3) La municipalité concernée paye les dépenses engagées par l'inspecteur de district des mauvaises herbes aux termes du paragraphe (2). Ces sommes sont recouvrables par le ministre au nom de Sa Majesté devant tout tribunal compétent en tant que créance de la Couronne.

Recouvrement des dépenses

(4) Dans toute action en justice, l'attestation du montant des dépenses qui se présente comme étant signée par le ministre en constitue une preuve concluante sans qu'il soit nécessaire de prouver l'authenticité de la signature du ministre ou d'établir son autorité.

Attestation en tant que preuve

19 Nul ne doit déposer ni permettre de déposer des mauvaises herbes nuisibles ou des graines de mauvaises herbes dans un lieu où elles pourraient pousser ou se propager.

Interdiction

20 Si le déplacement d'une machine utilisée à des fins agricoles risque d'entraîner la pousse ou la propagation de mauvaises herbes nuisibles ou de graines de mauvaises herbes, nul ne doit déplacer ni faire déplacer une telle machine sans l'avoir au préalable débarrassée de toutes graines et autre résidu.

Machines agricoles

21 Quiconque est responsable d'un élévateur à grain, d'une installation de nettoyage des céréales ou d'une autre installation destinée à nettoyer ou à moudre des céréales élimine tout déchet contenant des graines de mauvaises herbes d'une façon qui les empêche de pousser ou de se propager.

Élévateurs à grain, etc.

22 Les articles 3, 13, 16 et 18 ne s'appliquent pas aux mauvaises herbes nuisibles ni aux graines de mauvaises herbes qui se trouvent suffisamment loin de tout terrain exploité à

Exception

Offence

23.—(1) A person who contravenes this Act or the regulations, or an order made under this Act, is guilty of an offence and on conviction is liable for a first offence to a fine of not less than \$500 and not more than \$1,000 and for each subsequent offence to a fine of not less than \$1,000 and not more than \$2,000.

Idem,
particular
circumstances

(2) Subsection (1) applies to a person who is in contravention of section 3 or of an order made under subsection 13 (1) even though an inspector has caused or may cause the noxious weeds and weed seeds to be destroyed.

Regulations

24.—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating plants as noxious weeds;
- (b) prescribing the procedures for destroying noxious weeds and weed seeds;
- (c) prescribing the conditions under which noxious weeds and weed seeds may be destroyed under sections 15, 16 and 18;
- (d) respecting the transportation of farm produce, gravel or any other substance that is infested with noxious weeds or weed seeds;
- (e) prescribing measures that shall be taken to prevent the establishment of any noxious weed in any locality;
- (f) providing for the reimbursement of counties, district municipalities, regional municipalities and municipalities in territorial districts by the Province of Ontario for any part of the moneys expended under this Act and prescribing limits on the amounts reimbursed;
- (g) prescribing measures that shall be taken to prevent the use of bird feed that is infested with weed seeds;

des fins agricoles ou horticoles pour ne pas nuire à une telle exploitation.

23 (1) Quiconque contrevient à la présente loi ou aux règlements, ou à un ordre donné aux termes de la présente loi, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au moins 500 \$ et d'au plus 1 000 \$ à l'égard d'une première infraction, et d'une amende d'au moins 1 000 \$ et d'au plus 2 000 \$ à l'égard de chaque infraction subséquente.

Infraction

(2) Le paragraphe (1) s'applique à la personne qui contrevient à l'article 3 ou à un ordre donné aux termes du paragraphe 13 (1) même si un inspecteur a fait détruire ou peut faire détruire les mauvaises herbes nuisibles et les graines de mauvaises herbes.

Idem,
circonstances
particulières

24 (1) Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) désigner des plantes comme mauvaises herbes nuisibles;
- b) prescrire la marche à suivre pour détruire les mauvaises herbes nuisibles et les graines de mauvaises herbes;
- c) prescrire les conditions de destruction des mauvaises herbes nuisibles et des graines de mauvaises herbes aux termes des articles 15, 16 et 18;
- d) traiter du transport des produits agricoles, du gravier et d'autres substances infestés de mauvaises herbes nuisibles ou de graines de mauvaises herbes;
- e) prescrire les mesures à prendre pour empêcher l'implantation de mauvaises herbes nuisibles dans une localité;
- f) prévoir le remboursement par la province de l'Ontario aux comtés, aux municipalités de district, aux municipalités régionales et aux municipalités se trouvant dans des districts territoriaux, de toute somme déboursée aux termes de la présente loi, et prescrire des plafonds relativement aux montants remboursés;
- g) prescrire les mesures à prendre pour empêcher l'utilisation de nourriture pour oiseaux infestée de graines de mauvaises herbes;

(h) prescribing forms and providing for their use.

Idem

(2) A regulation may be general or specific in its application.

Repeal

25. The *Weed Control Act*, being chapter 530 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-
ment

26. This Act comes into force on the day it receives Royal Assent.

Short title

27. The short title of this Act is the *Weed Control Act, 1988*.

- h) prescrire des formules et prévoir les modalités de leur emploi.

(2) Un règlement peut avoir une portée générale ou parti- Idem
culière.

25 La *Loi sur la destruction des mauvaises herbes*, qui Abrogation
constitue le chapitre 530 des Lois refondues de l'Ontario de
1980, est abrogée.

26 La présente loi entre en vigueur le jour où elle reçoit la Entrée en
sanction royale. vigueur

27 Le titre abrégé de la présente loi est *Loi de 1988 sur la* Titre abrégé
destruction des mauvaises herbes.

Bill 138

*(Chapter 51
Statutes of Ontario, 1988)*

An Act to revise the Weed Control Act

The Hon. J. Riddell
*Minister of Agriculture
and Food*

<i>1st Reading</i>	May 25th, 1988
<i>2nd Reading</i>	June 22nd, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Projet de loi 138

*(Chapitre 51
Lois de l'Ontario de 1988)*

Loi portant révision de la Loi sur la destruction des mauvaises herbes

L'honorable J. Riddell
*ministre de l'Agriculture
et de l'Alimentation*

<i>1^{re} lecture</i>	25 mai 1988
<i>2^e lecture</i>	22 juin 1988
<i>3^e lecture</i>	29 juin 1988
<i>sanction royale</i>	29 juin 1988

Bill 138**1988****An Act to revise the
Weed Control Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions**1.** In this Act,

“inspecteur
de secteur
des
mauvaises
herbes”

“area weed inspector” means an area weed inspector appointed under section 6;

“inspecteur
en chef”

“chief inspector” means the chief inspector appointed under section 2;

“inspecteur
de district
des
mauvaises
herbes”

“district weed inspector” means a district weed inspector appointed under section 2;

“inspecteur”

“inspector” means an area weed inspector, district weed inspector or municipal weed inspector;

“mauvaise
herbe locale”

“local weed” means a plant designated under section 10 as a local weed;

“ministre”

“Minister” means the Minister of Agriculture and Food;

“inspecteur
municipal des
mauvaises
herbes”

“municipal weed inspector” means a municipal weed inspector appointed under section 8;

“mauvaise
herbe
nuisible”

“noxious weed” means a plant that is deemed to be a noxious weed under subsection 10 (2) or designated as a noxious weed under clause 24 (a);

“proprié-
taire”

“owner” means the person shown as the owner of land on the last revised assessment roll of the municipality in which the land is located;

“prescrit”

“prescribed” means prescribed by the regulations;

Projet de loi 138**1988**

**Loi portant révision de la
Loi sur la destruction des mauvaises herbes**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1	Les définitions qui suivent s'appliquent à la présente loi.	Définitions
«graine de mauvaise herbe»	Graine d'une mauvaise herbe nuisible.	«weed seed»
«inspecteur»	Inspecteur de secteur des mauvaises herbes, inspecteur de district des mauvaises herbes ou inspecteur municipal des mauvaises herbes.	«inspector»
«inspecteur de district des mauvaises herbes»	Inspecteur de district des mauvaises herbes nommé en vertu de l'article 2.	«district weed inspector»
«inspecteur de secteur des mauvaises herbes»	Inspecteur de secteur des mauvaises herbes nommé en vertu de l'article 6.	«area weed inspector»
«inspecteur en chef»	L'inspecteur en chef nommé en vertu de l'article 2.	«chief inspector»
«inspecteur municipal des mauvaises herbes»	Inspecteur municipal des mauvaises herbes nommé en vertu de l'article 8.	«municipal weed inspector»
«mauvaise herbe locale»	Plante désignée comme mauvaise herbe locale en vertu de l'article 10.	«local weed»
«mauvaise herbe nuisible»	Plante réputée une mauvaise herbe nuisible en vertu du paragraphe 10 (2) ou désignée comme telle en vertu de l'alinéa 24 a).	«noxious weed»
«ministre»	Le ministre de l'Agriculture et de l'Alimentation.	«Minister»
«prescrit»	Prescrit par les règlements.	«prescribed»
«propriétaire»	La personne figurant comme propriétaire d'un terrain au dernier rôle d'évaluation révisé de la municipalité où le terrain est situé.	«owner»

"règlements" "regulations" means the regulations made under this Act;

"graine de mauvaïse herbe"

"weed seed" means the seed of a noxious weed.

Chief inspector, district weed inspector

2. The Minister may appoint a chief inspector and a district weed inspector for any district designated in the appointment.

Duty to destroy noxious weeds

3. Every person in possession of land shall destroy all noxious weeds on it.

Persons deemed in possession

4. For the purposes of this Act, the owner of land shall be deemed, unless the contrary is proved, to be the person in possession of it.

Road authorities deemed in possession of roads
R.S.O. 1980, c. 421

5. For the purposes of section 3, every road authority within the meaning of the *Public Transportation and Highway Improvement Act* shall be deemed to be the person in possession of the land under its jurisdiction.

Appointment of inspectors

6.—(1) The council of every county, district municipality and regional municipality shall by by-law appoint one or more persons as area weed inspectors to enforce this Act in the area within the council's jurisdiction and fix their remuneration or other compensation.

Division into areas

(2) The council may divide the county, district municipality or regional municipality into areas and appoint one or more area weed inspectors for each area.

Failure to appoint inspectors

(3) If a council fails to appoint an area weed inspector, the Minister may appoint the area weed inspector and fix his or her remuneration or other compensation.

Minister to notify council of appointment

(4) The Minister shall notify the council of the appointment in writing and the treasurer of the municipality shall pay the remuneration or other compensation so fixed to the area weed inspector.

Clerk to notify chief inspector of appointment

7.—(1) The clerk of each county, district municipality and regional municipality shall, before the 1st day of April in each year, give the chief inspector a written notice indicating the name and address of every area weed inspector and the area for which the appointment is made.

Idem

(2) If the council of a county, district municipality or regional municipality passes a by-law appointing an area weed

«règlements» Les règlements pris en application de la présente loi. «regulations»

2 Le ministre peut nommer un inspecteur en chef et un inspecteur de district des mauvaises herbes pour tout district désigné dans la nomination. Inspecteur en chef et inspecteur de district des mauvaises herbes

3 La personne en possession d'un terrain détruit toutes les mauvaises herbes nuisibles qui s'y trouvent. Obligation de détruire les mauvaises herbes nuisibles

4 Pour l'application de la présente loi, le propriétaire d'un terrain est la personne réputée en possession du terrain, sauf preuve du contraire. Personne réputée en possession du terrain

5 Pour l'application de l'article 3, les offices de la voirie, au sens de la *Loi sur l'aménagement des routes et des transports en commun*, sont réputés les personnes en possession des terrains relevant de leur compétence. Les offices de la voirie réputés en possession de routes L.R.O. 1980, chap. 421

6 (1) Le conseil de chaque comté, municipalité de district et municipalité régionale nomme, par voie de règlement municipal, un ou plusieurs inspecteurs de secteur des mauvaises herbes chargés de l'exécution de la présente loi dans le territoire qui relève de la compétence du conseil et fixe leur rémunération ou autre rétribution. Nomination d'inspecteurs

(2) Le conseil peut diviser le comté, la municipalité de district ou la municipalité régionale en secteurs et nommer un ou plusieurs inspecteurs de secteur des mauvaises herbes pour chaque secteur. Division en secteurs

(3) Si le conseil ne nomme pas d'inspecteur de secteur des mauvaises herbes, le ministre peut nommer cet inspecteur et fixer sa rémunération ou autre rétribution. Nomination d'inspecteurs par le ministre

(4) Le ministre signifie par écrit cette nomination au conseil, et le trésorier de la municipalité verse à l'inspecteur de secteur des mauvaises herbes la rémunération ou autre rétribution ainsi fixée. Signification de la nomination au conseil

7 (1) Le secrétaire du comté, de la municipalité de district ou de la municipalité régionale donne à l'inspecteur en chef, avant le 1^{er} avril de chaque année, un avis écrit indiquant le nom et l'adresse de chaque inspecteur de secteur des mauvaises herbes et le secteur qui relève de sa compétence. Le secrétaire communique les nominations à l'inspecteur en chef

(2) Si le conseil d'un comté, d'une municipalité de district ou d'une municipalité régionale adopte un règlement municipi- Idem

inspector on or after the 1st day of April, the clerk shall within seven days after the passing of the by-law give the chief inspector a written notice indicating the name and address of every area weed inspector and the area for which the appointment is made.

Idem

(3) If an area weed inspector resigns or the council revokes the appointment, the clerk of the municipality shall within seven days of the resignation or revocation give the chief inspector written notice of it.

Appointment
of municipal
weed
inspectors

8.—(1) The council of any municipality not referred to in subsection 6 (1) may by by-law appoint one or more persons as municipal weed inspectors to enforce this Act in the area within the council's jurisdiction and fix their remuneration or other compensation.

Co-operation
with area
weed
inspector

(2) Persons who are appointed as municipal weed inspectors shall carry out their duties in co-operation with the area weed inspector.

Joint
jurisdiction

(3) Even though a municipal weed inspector has been appointed by a municipality, the area weed inspector may, when he or she considers it necessary, exercise his or her powers under this Act in the municipality.

Clerk to
notify chief
inspector of
appointment

9.—(1) The clerk of each municipality not referred to in subsection 6 (1) shall, before the 1st day of April in each year, give the chief inspector a written notice indicating the name and address of every municipal weed inspector for the area within its jurisdiction and the area for which the appointment is made.

Idem

(2) If the council of any municipality not referred to in subsection 6 (1) passes a by-law appointing a municipal weed inspector on or after the 1st day of April, the clerk shall within seven days after the passing of the by-law give the chief inspector a written notice indicating the name and address of every municipal weed inspector and the area for which the appointment is made.

Idem

(3) If a municipal weed inspector resigns or the council revokes the appointment, the clerk of the municipality shall within seven days of the resignation or revocation give the chief inspector written notice of it.

pal pour nommer un inspecteur de secteur des mauvaises herbes le 1^{er} avril ou après cette date, le secrétaire donne à l'inspecteur en chef, dans les sept jours suivant l'adoption du règlement municipal, un avis écrit indiquant le nom et l'adresse de chaque inspecteur de secteur des mauvaises herbes et le secteur qui relève de sa compétence.

(3) Si un inspecteur de secteur des mauvaises herbes démissionne ou que le conseil révoque sa nomination, le secrétaire de la municipalité en donne un avis écrit à l'inspecteur en chef dans les sept jours suivant la démission ou la révocation. Idem

8 (1) Le conseil d'une municipalité non visée au paragraphe 6 (1) peut, par voie de règlement municipal, nommer un ou plusieurs inspecteurs municipaux des mauvaises herbes chargés de l'exécution de la présente loi dans le territoire qui relève de la compétence du conseil et fixer leur rémunération ou autre rétribution. Nomination d'inspecteurs municipaux des mauvaises herbes

(2) Quiconque est nommé inspecteur municipal des mauvaises herbes exerce ses fonctions en collaboration avec l'inspecteur de secteur des mauvaises herbes. Collaboration avec l'inspecteur de secteur des mauvaises herbes

(3) Même si la municipalité a nommé un inspecteur municipal des mauvaises herbes, l'inspecteur de secteur des mauvaises herbes peut, s'il le juge nécessaire, exercer dans la municipalité les pouvoirs que lui confère la présente loi. Compétence conjointe

9 (1) Le secrétaire de chaque municipalité non visée au paragraphe 6 (1) donne à l'inspecteur en chef, avant le 1^{er} avril de chaque année, un avis écrit indiquant le nom et l'adresse de chaque inspecteur municipal des mauvaises herbes et le secteur qui relève de sa compétence. Le secrétaire communique la nomination à l'inspecteur en chef

(2) Si le conseil d'une municipalité non visée au paragraphe 6 (1) adopte un règlement municipal pour nommer un inspecteur municipal des mauvaises herbes le 1^{er} avril ou après cette date, le secrétaire donne à l'inspecteur en chef, dans les sept jours suivant l'adoption de ce règlement municipal, un avis écrit indiquant le nom et l'adresse de chaque inspecteur municipal des mauvaises herbes et le secteur qui relève de sa compétence. Idem

(3) Si un inspecteur municipal des mauvaises herbes démissionne ou que le conseil révoque sa nomination, le secrétaire de la municipalité en donne un avis écrit à l'inspecteur en chef dans les sept jours suivant la démission ou la révocation. Idem

Designation
of local weed
by municipal
by-law

10.—(1) A council of a county, district municipality or regional municipality that has appointed an area weed inspector or a council of a municipality that has appointed a municipal weed inspector may by by-law designate as a local weed any plant that is not a noxious weed.

Effect of
designation

(2) The by-law may apply in respect of the whole or any part of the municipality and, for the purposes of this Act, the plant that is designated shall be deemed to be a noxious weed within the area to which the by-law applies.

Approval of
by-laws

(3) The by-law does not take effect until it is approved by the Minister.

Inspectors in
territory
without
municipal
organization
R.S.O. 1980,
c. 482

11.—(1) Road commissioners appointed under the *Statute Labour Act* in territory without municipal organization shall have the powers of an inspector.

Expenses for
enforcement
collectable
under
R.S.O. 1980,
c. 482

(2) This Act applies in the case of territory without municipal organization in the same manner as in the case of a municipality, except that any sums payable by a person liable for expenses incurred or remuneration paid in enforcing this Act are collectable in the manner provided in the *Statute Labour Act* with respect to the enforcement of the payment of charges for statute labour or its commutation.

Powers of
inspectors

12.—(1) For the purpose of searching for noxious weeds or weed seeds, an inspector may at any time between sunrise and sunset enter upon any land and buildings, except a dwelling house, in the area within his or her jurisdiction and inspect the land, buildings and any implements, machinery, vehicles and crops or other plants.

Identification
to be
provided

(2) An inspector shall, upon request, show proper identification to the owner or occupier of the land or building being inspected.

Application
for warrant

(3) If an inspector is denied entry or access to buildings or land or is obstructed while carrying out an inspection, the inspector may apply to a justice of the peace for a warrant.

Issuing of
warrant

(4) If a justice of the peace is satisfied on evidence upon oath that it is necessary for an inspector to enter any buildings or land for the purpose of this Act, the justice of the peace may issue a warrant authorizing an inspector to enter the buildings or land specified in the warrant, together with such police officers as the inspector calls upon to assist him or her.

10 (1) Le conseil d'un comté, d'une municipalité de district ou d'une municipalité régionale qui a nommé un inspecteur de secteur des mauvaises herbes ou le conseil d'une municipalité qui a nommé un inspecteur municipal des mauvaises herbes peut, par voie de règlement municipal, désigner une plante qui n'est pas une mauvaise herbe nuisible comme mauvaise herbe locale.

Désignation
d'une mau-
vaise herbe
locale par
règlement
municipal

(2) Le règlement municipal peut s'appliquer à la totalité ou à une partie du territoire de la municipalité. Pour l'application de la présente loi, la plante désignée comme mauvaise herbe locale est réputée une mauvaise herbe nuisible dans le secteur auquel s'applique le règlement municipal.

Portée de la
désignation

(3) Le règlement municipal n'entre en vigueur qu'après son approbation par le ministre.

Approbation
des
règlements
municipaux

11 (1) Les administrateurs de la voirie nommés en vertu de la *Loi sur les corvées légales* dans des territoires non érigés en municipalité possèdent les mêmes pouvoirs qu'un inspecteur.

Inspecteurs
dans les terri-
toires non
érigés en
municipalité
L.R.O. 1980,
chap. 482

(2) La présente loi s'applique à l'égard d'un territoire non érigé en municipalité de la même façon qu'à l'égard d'une municipalité. Toutefois, les sommes dues par la personne redevable des frais engagés ou de la rémunération payée pour l'exécution de la présente loi sont recouvrables de la façon prévue dans la *Loi sur les corvées légales* en ce qui concerne l'exécution du paiement des frais de corvée légale ou le rachat de ces frais.

Dépenses
d'exécution
recouvrables
en vertu du
chap. 482 des
L.R.O. de
1980

12 (1) Entre le lever et le coucher du soleil, l'inspecteur peut pénétrer à tout moment sur un terrain ou dans un bâtiment, sauf s'il s'agit d'un logement, situé dans le secteur qui relève de sa compétence et inspecter le terrain, le bâtiment et tout outillage, machine, véhicule et récolte ou autres plantes pour rechercher des mauvaises herbes nuisibles ou des graines de mauvaises herbes.

Pouvoirs de
l'inspecteur

(2) Sur demande, l'inspecteur montre ses pièces d'identité au propriétaire ou à l'occupant du terrain ou du bâtiment qui fait l'objet de l'inspection.

Pièces
d'identité

(3) L'inspecteur qui se voit refuser l'entrée ou l'accès d'un bâtiment ou d'un terrain ou qui est entravé pendant qu'il effectue une inspection peut demander un mandat à un juge de paix.

Demande de
mandat

(4) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il est nécessaire qu'un ins-

Mandat

Application
without
notice

(5) A justice of the peace may receive and consider an application for a warrant without notice to the owner or occupier of the buildings or land.

Order for
destruction of
weeds

13.—(1) An inspector who finds noxious weeds or weed seeds on land in the area within his or her jurisdiction may order the person in possession of the land to destroy the noxious weeds or weed seeds.

Time for
destruction of
weeds

(2) The order shall be in the prescribed form and shall specify a time of at least seven days, excluding Saturdays and holidays, from the date of the service of the order within which the noxious weeds or weed seeds shall be destroyed.

Service of
order

(3) The order shall be served upon every person named in it,

(a) by personal service; or

(b) by mailing a copy of the order by prepaid first class mail, by registered mail or by certified mail to the last address for service provided by the person or, if no such address has been provided, to the person's address last noted on the tax assessment roll or, if none, to the person's last known address.

Effective
date of
service

(4) Service under clause (3) (b) is effective on the seventh day after the order is mailed.

Service on
owner and
person in
possession

(5) If there is evidence that the person in possession of land is not its owner, the order shall be served on both the owner and the person in possession.

Appeal to
chief
inspector

(6) A person who is served with an order under subsection (5) may, within seven days after service, appeal the order or any requirement contained in it to the chief inspector, giving reasons for the appeal.

Written
appeal

(7) The appeal and reasons shall be in writing.

pecteur pénètre dans un bâtiment ou sur un terrain pour l'application de la présente loi peut décerner un mandat qui autorise l'inspecteur, ainsi que les agents de police auxquels celui-ci demande de l'aider, à pénétrer dans le bâtiment ou sur le terrain précisé dans le mandat.

(5) Le juge de paix peut recevoir et étudier une demande de mandat sans préavis au propriétaire ou à l'occupant du bâtiment ou du terrain. Demande sans préavis

13 (1) L'inspecteur qui trouve, sur un terrain situé dans le secteur qui relève de sa compétence, des mauvaises herbes nuisibles ou des graines de mauvaises herbes, peut ordonner à la personne en possession du terrain de les détruire. Ordre de destruction de mauvaises herbes

(2) L'ordre est rédigé selon la formule prescrite et précise le délai dans lequel les mauvaises herbes nuisibles ou les graines de mauvaises herbes doivent être détruites. Ce délai est d'au moins sept jours, à l'exclusion des samedis et jours fériés, à partir de la date de signification de l'ordre. Délai accordé pour la destruction de mauvaises herbes

(3) L'ordre est signifié à toute personne dont le nom y figure de l'une des façons suivantes : Signification de l'ordre

a) à personne;

b) par l'envoi d'un exemplaire de l'ordre par courrier affranchi de première classe, par courrier recommandé ou par courrier certifié au dernier domicile élu de cette personne ou, si cette adresse n'a pas été fournie, à la dernière adresse figurant au rôle d'évaluation des impôts pour cette personne ou, à défaut, à sa dernière adresse connue.

(4) La signification aux termes de l'alinéa (3) b) est valide le septième jour suivant la date de mise à la poste de l'ordre. Date de validité de la signification

(5) S'il existe des preuves que la personne en possession du terrain n'en est pas le propriétaire, l'ordre est signifié au propriétaire et à la personne en possession du terrain. Signification au propriétaire et à la personne en possession du terrain

(6) La personne qui reçoit signification d'un ordre aux termes du paragraphe (5) peut, dans les sept jours de la signification, interjeter appel de l'ordre ou d'une disposition de celui-ci devant l'inspecteur en chef en motivant l'appel. Appel devant l'inspecteur en chef

(7) L'appel est interjeté par écrit. Les motifs sont également donnés par écrit. Appel écrit

- Parties** (8) The appellant, the inspector who made the order and such other persons as the chief inspector may specify are parties to the appeal.
- Examination of land** (9) The chief inspector may, in the presence of the parties or after affording them an opportunity to be present, view and examine land in relation to which the order appealed from is made and may base his or her decision upon the evidence adduced by the parties and on the view and examination.
- Decision of chief inspector** (10) After hearing an appeal under this section, the chief inspector may confirm or revoke the order or may make a new order in its place.
- Service of order** (11) The chief inspector's order shall be served in accordance with subsections (3), (4) and (5).
- Appeal** (12) The chief inspector's order may be appealed to the Divisional Court within thirty days of its making under subsection (10).
- Obstruction of inspectors** **14.** No person shall hinder or obstruct an inspector in the course of his or her duties, refuse to furnish the inspector with information or furnish him or her with false information.
- Failure to comply with order** **15.—(1)** If an order served under section 13 is not complied with, the inspector may cause the noxious weeds or weed seeds to be destroyed in the prescribed manner.
- Expenses of inspectors** (2) Inspectors shall keep a record of the expenses incurred under subsection (1) with respect to each parcel of land.
- Statement of expenses to be served on owner and person in possession of land** (3) The expenses shall be submitted to the clerk of the municipality who shall have a statement of the expenses and a notice requesting payment served on the person in possession of the land and on its owner.
- Service of statement and notice** (4) The statement and notice shall be served in the same manner as an order under section 13.
- Failure to pay** (5) If the person upon whom a statement and notice were served fails to pay the amount set out in the statement within fifteen days after the service of the notice, the clerk shall present the statement to the council of the municipality in which the land is located, and the council shall order the amount to be paid out of the general funds of the municipality.

(8) L'appelant, l'inspecteur qui a donné l'ordre et les autres personnes que l'inspecteur en chef peut désigner sont parties à l'appel.

Parties

(9) L'inspecteur en chef peut, en présence des parties ou après leur avoir donné la possibilité d'être présentes, inspecter le terrain visé par l'ordre qui fait l'objet de l'appel et rendre une décision fondée sur les preuves fournies par les parties et sur cette inspection.

Examen du terrain

(10) Après avoir entendu l'appel interjeté en vertu du présent article, l'inspecteur en chef peut confirmer ou révoquer l'ordre, ou le remplacer par un nouvel ordre.

Décision de l'inspecteur en chef

(11) L'ordre de l'inspecteur en chef est signifié conformément aux paragraphes (3), (4) et (5).

Signification de l'ordre

(12) Il peut être interjeté appel de la décision de l'inspecteur en chef devant la Cour divisionnaire dans les trente jours suivant celui où l'ordre a été donné en vertu du paragraphe (10).

Appel

14 Nul ne doit gêner ni entraver un inspecteur dans l'exercice de ses fonctions, refuser de lui fournir des renseignements ou lui fournir de faux renseignements.

Entrave à l'inspection

15 (1) Si un ordre signifié aux termes de l'article 13 n'est pas exécuté, l'inspecteur peut faire détruire les mauvaises herbes nuisibles ou les graines de mauvaises herbes de la façon prescrite.

Défaut d'exécution de l'ordre

(2) Les inspecteurs tiennent un état des dépenses qu'ils engagent en vertu du paragraphe (1) à l'égard de chaque parcelle.

Dépenses engagées par l'inspecteur

(3) L'état des dépenses est soumis au secrétaire de la municipalité qui fait signifier à la personne en possession du terrain et au propriétaire de celui-ci un relevé des dépenses accompagné d'une demande de paiement.

Signification du relevé des dépenses au propriétaire et à la personne en possession du terrain

(4) Le relevé des dépenses et la demande de paiement sont signifiés de la même façon que l'ordre prévu à l'article 13.

Mode de signification du relevé

(5) Si la personne à qui sont signifiés le relevé et la demande ne paie pas le montant figurant sur le relevé dans un délai de quinze jours après la signification de la demande, le secrétaire présente le relevé des dépenses au conseil de la municipalité où est situé le terrain. Le conseil ordonne de prélever le montant du remboursement sur les fonds d'administration de la municipalité.

Défaut de paiement

Collection of costs

(6) The amount paid by the municipality shall be deemed to be taxes and shall be added to the collector's roll against the respective parcels concerned and collected in the same manner and with the same priorities as municipal taxes.

Destruction of weeds

16.—(1) Despite section 13, the council of any city, town, village or township may direct any of its municipal weed inspectors or, if there are none, the area weed inspectors to cause noxious weeds or weed seeds to be destroyed in the prescribed manner on all or part of any lot shown on a registered plan of subdivision and on lots not exceeding 10 acres that are not shown on such a plan.

Notice requirement

(2) Before noxious weeds or weed seeds are destroyed, the council shall publish notice of its intent to have the noxious weeds or weed seeds destroyed in a newspaper having general circulation in the municipality.

Report of inspector

(3) The inspector shall report to the clerk of the municipality the amount of the expenses incurred under this section with respect to each parcel of land.

Statement of expenses to be served on owner and person in possession of land

(4) The clerk of the municipality shall have a statement of the expenses and a notice requesting payment served on the person in possession of the land and on its owner.

Service of statement and notice

(5) The statement and notice shall be served in the same manner as an order under section 13.

Failure to pay

(6) If the person upon whom a statement and notice were served fails to pay the amount set out in the statement within fifteen days after the service of the notice, the clerk shall present the statement to the council of the municipality in which the land is located, and the council shall order the amount to be paid out of the general funds of the municipality.

Collection of costs

(7) The amount paid by the municipality shall be deemed to be taxes and shall be added to the collector's roll against the respective parcels concerned and collected in the same manner and with the same priorities as municipal taxes.

Application for refund, etc.

17. A person may apply to the council for the cancellation, reduction or refund of an amount levied in the year with respect to orders for weed control and is entitled to make an appeal to the Assessment Review Board in the same manner as for taxes under section 496 of the *Municipal Act*.

R.S.O. 1980, c. 302

(6) Le montant payé par la municipalité est réputé constituer un impôt et est ajouté au rôle de recouvrement des impôts municipaux relativement aux parcelles respectives concernées. Son recouvrement s'effectue de la même façon et selon les mêmes priorités que celui des impôts municipaux.

Recouvrement
des frais

16 (1) Malgré l'article 13, le conseil d'une cité, d'une ville, d'un village ou d'un canton, peut ordonner à un de ses inspecteurs municipaux des mauvaises herbes ou, à défaut de ceux-ci, aux inspecteurs de secteur des mauvaises herbes, de faire détruire des mauvaises herbes nuisibles ou des graines de mauvaises herbes de la façon prescrite dans tout ou partie d'un lot qui figure sur un plan enregistré de lotissement, ainsi que dans des lots dont la superficie ne dépasse pas 10 acres et qui ne figurent pas sur un tel plan.

Destruction
des mauvaises
herbes

(2) Avant que des mauvaises herbes nuisibles ou des graines de mauvaises herbes ne soient détruites, le conseil publie un avis de son intention de les faire détruire dans un journal généralement lu dans la municipalité.

Publication
d'un avis

(3) L'inspecteur présente au secrétaire de la municipalité un rapport sur les dépenses engagées en vertu du présent article à l'égard de chaque parcelle.

Rapport de
l'inspecteur

(4) Le secrétaire de la municipalité fait signifier à la personne en possession du terrain et au propriétaire de celui-ci un relevé des dépenses accompagné d'une demande de paiement.

Signification
du relevé des
dépenses au
propriétaire et
à la personne
en possession
du terrain

(5) Le relevé des dépenses et la demande de paiement sont signifiés de la même façon que l'ordre prévu à l'article 13.

Mode de
signification

(6) Si la personne à qui sont signifiés le relevé et la demande ne paie pas le montant figurant sur le relevé dans un délai de quinze jours après la signification de la demande, le secrétaire présente le relevé des dépenses au conseil de la municipalité où est situé le terrain. Le conseil ordonne de prélever le montant du remboursement sur les fonds d'administration de la municipalité.

Défaut de
paiement

(7) Le montant payé par la municipalité est réputé constituer un impôt et est ajouté au rôle de recouvrement des impôts municipaux relativement aux parcelles respectives concernées. Son recouvrement s'effectue de la même façon et selon les mêmes priorités que celui des impôts municipaux.

Recouvrement
des frais

17 Quiconque peut présenter au conseil une demande d'annulation, de réduction ou de remboursement d'un impôt levé au cours de l'année relativement à des ordres de destruc-

Demande de
remboursement

Notice
requiring
noxious
weeds and
weed seeds
to be
destroyed

18.—(1) A district weed inspector who finds noxious weeds or weed seeds on any land owned by or under the control of a municipality within his or her district may deliver or send by prepaid first class mail to the clerk of the municipality a notice requiring the noxious weeds or weed seeds to be destroyed before a date specified in the notice.

Failure to
comply with
notice

(2) If the notice is not complied with, the district weed inspector may cause the noxious weeds or weed seeds to be destroyed in the prescribed manner.

Recovery of
expenses

(3) The expenses incurred by the district weed inspector under subsection (2) shall be paid by the municipality concerned and are recoverable in any court of competent jurisdiction by the Minister in the name of Her Majesty as a debt owed to the Crown.

Certificate
proof of
authority

(4) In any court action, the certificate purporting to be signed by the Minister as to the amount of the expenses is conclusive proof of the amount without proof of the Minister's authority or signature.

Prohibition

19. No person shall deposit or permit to be deposited any noxious weeds or weed seeds in any place where they might grow or spread.

Agricultural
machines

20. If the moving of a machine used for agricultural purposes is likely to cause noxious weeds or weed seeds to grow or spread, no person shall move the machine or cause it to be moved without first removing from it all seeds and other residue.

Grain
elevators,
etc.

21. A person in charge of a grain elevator, seed-cleaning plant or other grain-cleaning or grain-grinding plant shall dispose of all refuse containing weed seeds in a manner that will prevent them from growing or spreading.

Exception

22. Sections 3, 13, 16 and 18 do not apply to noxious weeds or weed seeds that are far enough away from any land used for agricultural or horticultural purposes that they do not interfere with that use.

tion des mauvaises herbes, et a le droit d'interjeter appel devant la Commission de révision de l'évaluation foncière, de la même façon que pour les impôts aux termes de l'article 496 de la *Loi sur les municipalités*.

L.R.O. 1980,
chap. 302

18 (1) L'inspecteur de district des mauvaises herbes qui trouve des mauvaises herbes nuisibles ou des graines de mauvaises herbes sur un terrain dont une municipalité située dans le district soumis à sa compétence est propriétaire ou a le contrôle peut remettre ou envoyer par courrier affranchi de première classe au secrétaire de la municipalité un avis exigeant leur destruction avant la date qu'il précise.

Avis exigeant
la destruction
de mauvaises
herbes et de
graines de
mauvaises
herbes

(2) Si l'avis n'est pas exécuté, l'inspecteur de district des mauvaises herbes peut faire détruire les mauvaises herbes nuisibles ou les graines de mauvaises herbes de la façon prescrite.

Défaut
d'exécution
de l'avis

(3) La municipalité concernée paye les dépenses engagées par l'inspecteur de district des mauvaises herbes aux termes du paragraphe (2). Ces sommes sont recouvrables par le ministre au nom de Sa Majesté devant tout tribunal compétent en tant que créance de la Couronne.

Recouvrement
des dépenses

(4) Dans toute action en justice, l'attestation du montant des dépenses qui se présente comme étant signée par le ministre en constitue une preuve concluante sans qu'il soit nécessaire de prouver l'authenticité de la signature du ministre ou d'établir son autorité.

Attestation
en tant que
preuve

19 Nul ne doit déposer ni permettre de déposer des mauvaises herbes nuisibles ou des graines de mauvaises herbes dans un lieu où elles pourraient pousser ou se propager.

Interdiction

20 Si le déplacement d'une machine utilisée à des fins agricoles risque d'entraîner la pousse ou la propagation de mauvaises herbes nuisibles ou de graines de mauvaises herbes, nul ne doit déplacer ni faire déplacer une telle machine sans l'avoir au préalable débarrassée de toutes graines et autre résidu.

Machines
agricoles

21 Quiconque est responsable d'un élévateur à grain, d'une installation de nettoyage des céréales ou d'une autre installation destinée à nettoyer ou à moudre des céréales élimine tout déchet contenant des graines de mauvaises herbes d'une façon qui les empêche de pousser ou de se propager.

Élévateurs à
grain, etc.

22 Les articles 3, 13, 16 et 18 ne s'appliquent pas aux mauvaises herbes nuisibles ni aux graines de mauvaises herbes qui se trouvent suffisamment loin de tout terrain exploité à

Exception

Offence

23.—(1) A person who contravenes this Act or the regulations, or an order made under this Act, is guilty of an offence and on conviction is liable for a first offence to a fine of not less than \$500 and not more than \$1,000 and for each subsequent offence to a fine of not less than \$1,000 and not more than \$2,000.

Idem,
particular
circumstances

(2) Subsection (1) applies to a person who is in contravention of section 3 or of an order made under subsection 13 (1) even though an inspector has caused or may cause the noxious weeds and weed seeds to be destroyed.

Regulations

24.—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating plants as noxious weeds;
- (b) prescribing the procedures for destroying noxious weeds and weed seeds;
- (c) prescribing the conditions under which noxious weeds and weed seeds may be destroyed under sections 15, 16 and 18;
- (d) respecting the transportation of farm produce, gravel or any other substance that is infested with noxious weeds or weed seeds;
- (e) prescribing measures that shall be taken to prevent the establishment of any noxious weed in any locality;
- (f) providing for the reimbursement of counties, district municipalities, regional municipalities and municipalities in territorial districts by the Province of Ontario for any part of the moneys expended under this Act and prescribing limits on the amounts reimbursed;
- (g) prescribing measures that shall be taken to prevent the use of bird feed that is infested with weed seeds;

des fins agricoles ou horticoles pour ne pas nuire à une telle exploitation.

23 (1) Quiconque contrevient à la présente loi ou aux règlements, ou à un ordre donné aux termes de la présente loi, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au moins 500 \$ et d'au plus 1 000 \$ à l'égard d'une première infraction, et d'une amende d'au moins 1 000 \$ et d'au plus 2 000 \$ à l'égard de chaque infraction subséquente.

Infraction

(2) Le paragraphe (1) s'applique à la personne qui contrevient à l'article 3 ou à un ordre donné aux termes du paragraphe 13 (1) même si un inspecteur a fait détruire ou peut faire détruire les mauvaises herbes nuisibles et les graines de mauvaises herbes.

Idem,
circonstances
particulières

24 (1) Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) désigner des plantes comme mauvaises herbes nuisibles;
- b) prescrire la marche à suivre pour détruire les mauvaises herbes nuisibles et les graines de mauvaises herbes;
- c) prescrire les conditions de destruction des mauvaises herbes nuisibles et des graines de mauvaises herbes aux termes des articles 15, 16 et 18;
- d) traiter du transport des produits agricoles, du gravier et d'autres substances infestés de mauvaises herbes nuisibles ou de graines de mauvaises herbes;
- e) prescrire les mesures à prendre pour empêcher l'implantation de mauvaises herbes nuisibles dans une localité;
- f) prévoir le remboursement par la province de l'Ontario aux comtés, aux municipalités de district, aux municipalités régionales et aux municipalités se trouvant dans des districts territoriaux, de toute somme déboursée aux termes de la présente loi, et prescrire des plafonds relativement aux montants remboursés;
- g) prescrire les mesures à prendre pour empêcher l'utilisation de nourriture pour oiseaux infestée de graines de mauvaises herbes;

(h) prescribing forms and providing for their use.

Idem (2) A regulation may be general or specific in its application.

Repeal **25.** The *Weed Control Act*, being chapter 530 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-
ment **26.** This Act comes into force on the day it receives Royal Assent.

Short title **27.** The short title of this Act is the *Weed Control Act*, 1988.

- h) prescrire des formules et prévoir les modalités de leur emploi.

(2) Un règlement peut avoir une portée générale ou particulière. Idem

25 La *Loi sur la destruction des mauvaises herbes*, qui constitue le chapitre 530 des Lois refondues de l'Ontario de 1980, est abrogée. Abrogation

26 La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en vigueur

27 Le titre abrégé de la présente loi est *Loi de 1988 sur la destruction des mauvaises herbes*. Titre abrégé

Bill 139

An Act to amend the Grain Elevator Storage Act, 1983

The Hon. J. Riddell

Minister of Agriculture and Food

1st Reading May 25th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The proposed amendment would permit an inspector to take samples of grain to ensure that the kind and grade of grain in the grain elevator is the same as set out in the grain storage receipts and weigh tickets.

SECTION 2.—Subsection 1. The proposed amendment would prohibit any person from operating a grain elevator without a licence.

Subsections 2 and 3. The proposed amendments would allow one application and one licence for a total operation rather than on each grain elevator.

SECTION 3. The new section 10a would allow the chief inspector to temporarily suspend or refuse to renew a licence where the interests of the persons storing farm produce are at risk.

SECTION 4. This amendment would increase the number of days in which a grain storage receipt must be issued from thirty to forty-five.

SECTION 5. The purpose of this amendment is to more accurately reflect industry terminology.

SECTION 6. Subsection 19 (4) would be amended to clarify that the insurance only relates to farm produce.

SECTION 7. The proposed amendment would authorize the chief inspector to issue shortfall permits subject to such terms and conditions as may be set out in the regulations.

SECTION 8. The proposed changes to section 26 would increase the authority to make regulations.

Bill 139

1988

An Act to amend the Grain Elevator Storage Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (3) of the *Grain Elevator Storage Act, 1983*, being chapter 40, is amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding thereto the following clause:

- (c) take and remove samples from a grain elevator for the purpose of determining whether there is compliance with section 21.

2.—(1) Subsection 3 (1) of the said Act is amended by inserting after “elevator” in the second line “or operate a grain elevator”.

(2) Subsection 3 (2) of the said Act is repealed and the following substituted therefor:

(2) A person shall make a separate application and obtain a separate licence for each different location on which a grain elevator is operated unless the person meets the requirements set out in subsection (2a), in which case, one application, or such other number of applications as the chief inspector considers appropriate, may be made.

Application
for licence

(3) Section 3 of the said Act is amended by adding thereto the following subsection:

(2a) Notwithstanding subsection (2), where a grain elevator operator,

Licence for
whole
operation

- (a) operates grain elevators at more than one location;
and

- (b) maintains a collective storage position based on grain storage receipts issued from a central office,

the chief inspector may issue one licence, or such other number of licences as the chief inspector considers appropriate, in respect of the total operation.

3. The said Act is amended by adding thereto the following section:

Provisional
suspension or
refusal to
renew

10a.—(1) Notwithstanding section 10, the chief inspector may, without a hearing, provisionally suspend or refuse to renew a licence where in the chief inspector's opinion it is necessary to do so for the immediate protection of the interests of persons storing farm produce.

Hearing
required

(2) Notice of suspension or refusal to renew under subsection (1), together with the reasons therefor, shall be given forthwith to the licensee and, as soon as is practicable thereafter, the chief inspector shall hold a hearing to determine whether the licence should be further suspended or revoked or whether renewal of the licence should be refused.

4. Subsection 16 (2) of the said Act is amended by striking out "thirty" in the fifth line and inserting in lieu thereof "forty-five".

5. Subsection 17 (4) of the said Act is amended by striking out "on option" in the second and third lines and inserting in lieu thereof "through a basis or delayed price contract".

6. Subsection 19 (4) of the said Act is repealed and the following substituted therefor:

Consent of
chief
inspector to
payment

(4) Every contract of insurance obtained under subsection (1) shall provide that payment thereunder in respect of the farm produce shall not be made without the consent of the chief inspector.

7. The said Act is further amended by adding thereto the following section:

Shortfall
permit

21a. Notwithstanding section 21, a permit for a shortfall position may be issued by the chief inspector, subject to such terms and conditions as may be prescribed in the regulations.

8.—(1) Clause 26 (b) of the said Act is repealed and the following substituted therefor:

- (b) prescribing the terms and conditions under which licences and shortfall permits may be issued.

(2) Section 26 of the said Act is amended by adding thereto the following clauses:

- (da) requiring that grain storage receipts be on serialized paper approved by the Ministry of Agriculture and Food;
- (db) prescribing standards for the establishment and operation of all premises, facilities and equipment used in a grain elevator;
- (dc) prescribing the methods for taking grain samples.

9. This Act comes into force on the day it receives Royal Assent. Commence-
ment

10. The short title of this Act is the *Grain Elevator Storage Amendment Act, 1988*. Short title

Bill 139

*(Chapter 67
Statutes of Ontario, 1988)*

An Act to amend the Grain Elevator Storage Act, 1983

The Hon. J. Riddell
Minister of Agriculture and Food

<i>1st Reading</i>	May 25th, 1988
<i>2nd Reading</i>	November 15th, 1988
<i>3rd Reading</i>	December 7th, 1988
<i>Royal Assent</i>	December 15th, 1988

Bill 139

1988

**An Act to amend the
Grain Elevator Storage Act, 1983**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (3) of the *Grain Elevator Storage Act, 1983*, being chapter 40, is amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding thereto the following clause:

- (c) take and remove samples from a grain elevator for the purpose of determining whether there is compliance with section 21.

2.—(1) Subsection 3 (1) of the said Act is amended by inserting after “elevator” in the second line “or operate a grain elevator”.

(2) Subsection 3 (2) of the said Act is repealed and the following substituted therefor:

(2) A person shall make a separate application and obtain a separate licence for each different location on which a grain elevator is operated unless the person meets the requirements set out in subsection (2a), in which case, one application, or such other number of applications as the chief inspector considers appropriate, may be made.

Application
for licence

(3) Section 3 of the said Act is amended by adding thereto the following subsection:

(2a) Notwithstanding subsection (2), where a grain elevator operator,

Licence for
whole
operation

- (a) operates grain elevators at more than one location;
and

- (b) maintains a collective storage position based on grain storage receipts issued from a central office,

the chief inspector may issue one licence, or such other number of licences as the chief inspector considers appropriate, in respect of the total operation.

3. The said Act is amended by adding thereto the following section:

Provisional
suspension or
refusal to
renew

10a.—(1) Notwithstanding section 10, the chief inspector may, without a hearing, provisionally suspend or refuse to renew a licence where in the chief inspector's opinion it is necessary to do so for the immediate protection of the interests of persons storing farm produce.

Hearing
required

(2) Notice of suspension or refusal to renew under subsection (1), together with the reasons therefor, shall be given forthwith to the licensee and, as soon as is practicable thereafter, the chief inspector shall hold a hearing to determine whether the licence should be further suspended or revoked or whether renewal of the licence should be refused.

4. Subsection 16 (2) of the said Act is amended by striking out "thirty" in the fifth line and inserting in lieu thereof "forty-five".

5. Subsection 17 (4) of the said Act is amended by striking out "on option" in the second and third lines and inserting in lieu thereof "through a basis or delayed price contract".

6. Subsection 19 (4) of the said Act is repealed and the following substituted therefor:

Consent of
chief
inspector to
payment

(4) Every contract of insurance obtained under subsection (1) shall provide that payment thereunder in respect of the farm produce shall not be made without the consent of the chief inspector.

7. The said Act is further amended by adding thereto the following section:

Shortfall
permit

21a. Notwithstanding section 21, a permit for a shortfall position may be issued by the chief inspector, subject to such terms and conditions as may be prescribed in the regulations.

8.—(1) Clause 26 (b) of the said Act is repealed and the following substituted therefor:

- (b) prescribing the terms and conditions under which licences and shortfall permits may be issued.

(2) Section 26 of the said Act is amended by adding thereto the following clauses:

- (da) requiring that grain storage receipts be on serialized paper approved by the Ministry of Agriculture and Food;
- (db) prescribing standards for the establishment and operation of all premises, facilities and equipment used in a grain elevator;
- (dc) prescribing the methods for taking grain samples.

9. This Act comes into force on the day it receives Royal Assent. Commence-
ment

10. The short title of this Act is the *Grain Elevator Storage Amendment Act, 1988*. Short title

Bill 140

An Act to revise the Farm Products Containers Act

The Hon. J. Riddell
Minister of Agriculture and Food

1st Reading May 25th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The key changes that are made by the revision of the Act are as follows:

SECTION 1. The farm products to which the Act applies will be designated by regulation.

SECTION 2. The Minister may appoint a Director and inspectors to carry out audits of the associations of producers.

SECTION 3. Changes were made to clarify that the licence fee must be paid on all containers used in the marketing of farm products including those containers purchased outside Ontario.

SECTIONS 4 and 5. Audits of associations may now be carried out by inspectors appointed for that purpose. Audits of producers and sellers of containers would be carried out by auditors appointed by the association.

SECTION 6. An inspector or auditor may enter any premises for examining the accounts of the association or the producer or seller of containers. No person may obstruct an inspector or auditor in the course of his or her duties or furnish him or her with false information or refuse to furnish him or her with information.

SECTION 7. The fines for a violation of the Act have been increased to \$5,000 for a first offence and \$10,000 for a subsequent offence. Formerly they were \$500 and \$5,000, respectively.

Bill 140**1988**

**An Act to revise the
Farm Products Containers Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“association” means an association of producers;

“container” includes any bag, basket, bottle, box, can, carton, crate, pot or other receptacle used or suitable for use in the marketing of farm products;

“farm products” means such fruit, honey, maple products, vegetables, plants, flowers, mushrooms, seeds and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations;

“licence” means a licence provided for in the regulations;

“Minister” means the Minister of Agriculture and Food or such other member of the Executive Council to whom the administration of this Act may be assigned;

“producer” means a person engaged in the production of farm products and includes a person engaged in the handling, packing, processing, shipping, transporting, purchasing or selling of farm products;

“regulations” means regulations made under this Act.

2. The Minister may appoint a Director to administer and enforce this Act and may appoint inspectors, who shall be under the supervision of the Director, to carry out the audits authorized under subsection 4 (1).

Minister may
appoint
Director,
inspectors

Regulations

3. If the Minister receives from an association a request that, for the purpose of defraying the expenses of the association, every producer specified in the request who purchases containers be required to be licensed and to pay licence fees and the Minister is of the opinion that the association is representative of the producers, the Lieutenant Governor in Council may make regulations,

- (a) designating the association as one to which this Act applies;
- (b) providing for the licensing of every producer and requiring the producer to pay licence fees to the association directly in respect of containers purchased outside Ontario and to the seller on behalf of the association in respect of containers purchased in Ontario;
- (c) fixing the amount of the licence fees and the time of payment thereof;
- (d) exempting from the regulations any class of producer;
- (e) exempting from the regulations any type of container;
- (f) designating farm products or classes of farm products to which this Act applies;
- (g) requiring every person who sells containers either directly or indirectly to producers to collect the licence fees from the producers and to pay them to the association;
- (h) requiring the sellers of containers in Ontario and the producers who purchase containers outside Ontario to pay interest on overdue fees payable and prescribing the rate of interest;
- (i) requiring the association to provide an annual written report to the Minister setting out the amount of fees collected and for what purpose the fees were used;
- (j) requiring persons engaged in selling containers to producers to furnish to the association such information relating to the sale of containers, including the completing and filing of returns, as the association determines;

- (k) requiring the association to appoint auditors to audit the records of producers and sellers of containers;
- (l) restricting the purposes for which an association may use licence fees;
- (m) prohibiting the association from using any licence fees for the retail or wholesale distribution or processing of the farm product;
- (n) providing for the recovery by the association of licence fees in any court of competent jurisdiction, and requiring persons engaged in selling containers to producers to account for licence fees payable to the association;
- (o) prescribing fees payable to the Treasurer of Ontario for an audit by an inspector of the records of an association.

4.—(1) The records of associations that relate to the purchase or sale of containers may be audited by an inspector. Audit by inspector

(2) Every association shall, upon the request of an inspector, produce or furnish their records that relate to the receipt and expenditure of fees received from sellers of containers and producers who have purchased containers outside Ontario. Idem

5.—(1) The records of producers and sellers of containers that relate to the purchase or sale of containers may be audited by an auditor appointed by the association. Audit by association

(2) Every seller of containers and every producer shall, upon the request of an auditor, produce or furnish their records that relate to the purchase or sale of containers. Records to be produced

6.—(1) An inspector or auditor, as applicable, may enter and have access to any premises for the purpose of examining the records mentioned in subsection 4 (1) or 5 (1). Examination of records

(2) An inspector or auditor may remove the records in order to make copies but shall immediately return them. Copies of record

(3) Subsection (1) is not authority to enter a private residence without the consent of the occupier. Private residence

(4) The authority under subsection (1) shall be exercised only at reasonable times. Reasonable times

Identification
to be
produced

(5) An inspector or auditor exercising the authority under subsection (1) shall carry identification showing evidence of his or her appointment and shall produce the identification upon request.

Copy as
evidence

(6) A copy of a record purporting to be certified by an inspector or auditor to be a copy made under subsection (2) is admissible in evidence in a judicial proceeding and has the same evidentiary value as the original document without proof of the signature of the inspector or auditor or of his or her being in fact the inspector or auditor.

Obstruction
of inspector

(7) No person shall hinder or obstruct an inspector or auditor in the course of his or her duties or furnish the inspector or auditor with false information or refuse to furnish him or her with information.

Offence

7. A person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and to a fine of not more than \$10,000 for a subsequent offence.

Repeal

8. The *Farm Products Containers Act, 1982*, being chapter 53, is repealed.

Commence-
ment

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10. The short title of this Act is the *Farm Products Containers Act, 1988*.

Bill 140

*(Chapter 68
Statutes of Ontario, 1988)*

An Act to revise the Farm Products Containers Act

The Hon. J. Riddell
Minister of Agriculture and Food

<i>1st Reading</i>	May 25th, 1988
<i>2nd Reading</i>	November 15th, 1988
<i>3rd Reading</i>	December 7th, 1988
<i>Royal Assent</i>	December 15th, 1988

Bill 140**1988**

**An Act to revise the
Farm Products Containers Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“association” means an association of producers;

“container” includes any bag, basket, bottle, box, can, carton, crate, pot or other receptacle used or suitable for use in the marketing of farm products;

“farm products” means such fruit, honey, maple products, vegetables, plants, flowers, mushrooms, seeds and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations;

“licence” means a licence provided for in the regulations;

“Minister” means the Minister of Agriculture and Food or such other member of the Executive Council to whom the administration of this Act may be assigned;

“producer” means a person engaged in the production of farm products and includes a person engaged in the handling, packing, processing, shipping, transporting, purchasing or selling of farm products;

“regulations” means regulations made under this Act.

2. The Minister may appoint a Director to administer and enforce this Act and may appoint inspectors, who shall be under the supervision of the Director, to carry out the audits authorized under subsection 4 (1).

Minister may
appoint
Director,
inspectors

Regulations

3. If the Minister receives from an association a request that, for the purpose of defraying the expenses of the association, every producer specified in the request who purchases containers be required to be licensed and to pay licence fees and the Minister is of the opinion that the association is representative of the producers, the Lieutenant Governor in Council may make regulations,

- (a) designating the association as one to which this Act applies;
- (b) providing for the licensing of every producer and requiring the producer to pay licence fees to the association directly in respect of containers purchased outside Ontario and to the seller on behalf of the association in respect of containers purchased in Ontario;
- (c) fixing the amount of the licence fees and the time of payment thereof;
- (d) exempting from the regulations any class of producer;
- (e) exempting from the regulations any type of container;
- (f) designating farm products or classes of farm products to which this Act applies;
- (g) requiring every person who sells containers either directly or indirectly to producers to collect the licence fees from the producers and to pay them to the association;
- (h) requiring the sellers of containers in Ontario and the producers who purchase containers outside Ontario to pay interest on overdue fees payable and prescribing the rate of interest;
- (i) requiring the association to provide an annual written report to the Minister setting out the amount of fees collected and for what purpose the fees were used;
- (j) requiring persons engaged in selling containers to producers to furnish to the association such information relating to the sale of containers, including the completing and filing of returns, as the association determines;

- (k) requiring the association to appoint auditors to audit the records of producers and sellers of containers;
- (l) restricting the purposes for which an association may use licence fees;
- (m) prohibiting the association from using any licence fees for the retail or wholesale distribution or processing of the farm product;
- (n) providing for the recovery by the association of licence fees in any court of competent jurisdiction, and requiring persons engaged in selling containers to producers to account for licence fees payable to the association;
- (o) prescribing fees payable to the Treasurer of Ontario for an audit by an inspector of the records of an association.

4.—(1) The records of associations that relate to the purchase or sale of containers may be audited by an inspector. Audit by inspector

(2) Every association shall, upon the request of an inspector, produce or furnish their records that relate to the receipt and expenditure of fees received from sellers of containers and producers who have purchased containers outside Ontario. Idem

5.—(1) The records of producers and sellers of containers that relate to the purchase or sale of containers may be audited by an auditor appointed by the association. Audit by association

(2) Every seller of containers and every producer shall, upon the request of an auditor, produce or furnish their records that relate to the purchase or sale of containers. Records to be produced

6.—(1) An inspector or auditor, as applicable, may enter and have access to any premises for the purpose of examining the records mentioned in subsection 4 (1) or 5 (1). Examination of records

(2) An inspector or auditor may remove the records in order to make copies but shall immediately return them. Copies of record

(3) Subsection (1) is not authority to enter a private residence without the consent of the occupier. Private residence

(4) The authority under subsection (1) shall be exercised only at reasonable times. Reasonable times

Identification
to be
produced

(5) An inspector or auditor exercising the authority under subsection (1) shall carry identification showing evidence of his or her appointment and shall produce the identification upon request.

Copy as
evidence

(6) A copy of a record purporting to be certified by an inspector or auditor to be a copy made under subsection (2) is admissible in evidence in a judicial proceeding and has the same evidentiary value as the original document without proof of the signature of the inspector or auditor or of his or her being in fact the inspector or auditor.

Obstruction
of inspector

(7) No person shall hinder or obstruct an inspector or auditor in the course of his or her duties or furnish the inspector or auditor with false information or refuse to furnish him or her with information.

Offence

7. A person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and to a fine of not more than \$10,000 for a subsequent offence.

Repeal

8. The *Farm Products Containers Act, 1982*, being chapter 53, is repealed.

Commence-
ment

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10. The short title of this Act is the *Farm Products Containers Act, 1988*.

Bill 141

An Act respecting Metropolitan Toronto Convention Centre Corporation

The Hon. H. O'Neil

Minister of Tourism and Recreation

1st Reading May 25th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill continues the Metropolitan Toronto Convention Centre Corporation, whose objects are set out in subsection 6 (1).

Bill 141

1988

An Act respecting Metropolitan Toronto Convention Centre Corporation

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means the Board of Directors of the Corporation;

“Centre” means the Metro Toronto Convention Centre;

“Corporation” means Metropolitan Toronto Convention Centre Corporation;

“Minister” means the Minister of Tourism and Recreation or such other member of the Executive Council as the Lieutenant Governor in Council designates to administer this Act.

2.—(1) Metropolitan Toronto Convention Centre Corporation, a corporation incorporated under the *Corporations Act* by letters patent issued on the 4th day of February, 1981, is hereby continued as a corporation without share capital.

Corporation continued

(2) The *Corporations Act* does not apply to the Corporation.

R.S.O. 1980,
c. 95 does
not apply

(3) The Corporation shall consist of not fewer than seven and not more than thirteen members of whom,

Composition

- (a) not more than ten shall be appointed by the Lieutenant Governor in Council; and
- (b) not more than three shall be appointed by resolution of the council of The Municipality of Metropolitan Toronto.

Term of
office

(4) Each member of the Corporation shall hold office for a term not exceeding three years and until his or her successor is appointed and is eligible for reappointment.

Board

3.—(1) The members of the Corporation form and are its Board of Directors.

Chairperson,
president

(2) The Lieutenant Governor in Council shall designate one of the directors as chairperson of the Board and another of the directors as president and chief executive officer of the Corporation.

Remuner-
ation and
expenses

(3) The Corporation may pay its directors such remuneration and expenses as are fixed by the Lieutenant Governor in Council.

Exception,
remuneration

(4) Despite subsection (3), the Corporation shall not pay remuneration to a director in his or her capacity as a director if he or she is,

(a) an employee of Her Majesty in right of Ontario or of an agency of Her Majesty in right of Ontario; or

R.S.O. 1980,
c. 302

(b) an employee, as defined in paragraph 46 of section 208 of the *Municipal Act*, of a municipality, including a district, metropolitan or regional municipality, or of a local board as defined in the said paragraph 46.

Disclosure:
conflict of
interest
1982, c. 4

(5) Section 132 of the *Business Corporations Act*, 1982 applies with necessary modifications to members of the Board.

Chairperson
to preside

4.—(1) The chairperson shall preside at all meetings of the Board and, in the chairperson's absence, one of the directors present at the meeting who is chosen to act by the directors present at the meeting has all the powers and duties of the chairperson.

Quorum

(2) A majority of the directors constitutes a quorum for the transaction of business at meetings of the Board.

By-laws

(3) The Board may pass by-laws regulating its proceedings, specifying the powers and duties of the officers and employees of the Corporation, and generally for the conduct and management of the affairs of the Corporation.

Executive
committee

(4) The Board may appoint from its membership a committee of directors and delegate to such committee any of the powers of the Board.

(5) A by-law or resolution consented to by the signatures of all of the directors or all of the members of a committee established under subsection (4) is as valid and effective as if it had been passed at a meeting of the Board or committee, respectively, held for that purpose.

Approval of
by-law or
resolution

5. The Board shall manage and supervise the affairs of the Corporation.

Duties of
Board

6.—(1) The objects of the Corporation are to operate, maintain and manage an international class convention centre facility in The Municipality of Metropolitan Toronto to be known as the Metro Toronto Convention Centre in a manner that will promote and develop tourism and industry in Ontario.

Objects

(2) The Corporation, for the objects set out in subsection (1), has power,

Powers

- (a) to make agreements with persons with respect to the establishment or operation by them of any works or services in connection with the construction, operation and maintenance of the Centre;
- (b) to operate or grant leases for the operation of retail shops, restaurants, theatres, parking facilities, exhibition facilities, and any other facilities or conveniences incidental to or necessary to the operation of the Centre;
- (c) to buy, hold, own, hire, maintain, control, take, lease, sell, assign, exchange, transfer, manage, improve, develop or dispose of any real and personal property and any right or privilege that, in the opinion of the Board, is necessary or convenient for the purposes of the Corporation;
- (d) unless an order has been made under subsection 11 (2), temporarily to invest any surplus moneys not immediately required for the objects of the Corporation in,
 - (i) securities issued by or guaranteed as to principal and interest by the Province of Ontario, any other province of Canada, or Canada,
 - (ii) guaranteed investment certificates of any trust corporation that is registered under the *Loan and Trust Corporations Act, 1987*,

1980-81,
c. 40 (Can.)

(iii) deposit receipts, deposit notes, certificates of deposits, acceptances and other similar instruments issued or endorsed by a bank named in Schedule A or B to the *Bank Act* (Canada) or with the Province of Ontario Savings Office, and

R.S.O. 1980,
c. 102

(iv) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*;

(e) with the approval of the Lieutenant Governor in Council,

(i) to borrow money upon the credit of the Corporation,

(ii) to issue, sell or pledge securities of the Corporation, and

(iii) to charge, mortgage or pledge all or any currently owned or subsequently acquired real or personal property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed or other debt or liability of the Corporation;

(f) enter into agreements with The Municipality of Metropolitan Toronto for the use by the Corporation of services, equipment and facilities of The Municipality of Metropolitan Toronto; and

(g) do anything incidental to the attainment of the objects of the Corporation.

Head office

7.—(1) The Corporation's head office shall be in The Municipality of Metropolitan Toronto.

Seal

(2) The Corporation shall have a seal which shall be adopted by a resolution or by-law of the Board.

Staff

8.—(1) The Corporation may engage such persons as are considered necessary for the proper conduct of the affairs of the Corporation.

Use of
Government
facilities

(2) The Corporation may make use of such services and facilities, including the services of a public servant on secondment, as are provided to it by a ministry, board, commission or agency of the Government of Ontario.

9. No action or other proceeding for damages shall be instituted against a director or officer of the Corporation or a former director or officer of the Corporation for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Protection
from
personal
liability

10.—(1) The real property vested in or leased to the Corporation is exempt from taxation for municipal and school purposes so long as it is actually used and occupied for the purposes of the Corporation.

Tax
exemption

(2) For the purposes of subsection 219 (8) of the *Municipality of Metropolitan Toronto Act*, the exemption of real property from taxation granted under subsection (1) is deemed to be an exemption provided under section 3 of the *Assessment Act*.

Idem
R.S.O. 1980,
cc. 314, 31

11.—(1) The income, revenues and profits earned by the Corporation shall be applied only to the furtherance of the objects of the Corporation.

Earnings of
Corporation

(2) Any surplus moneys of the Corporation shall, on the order of the Lieutenant Governor in Council, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund.

Surplus
money

(3) The Minister may, out of the moneys appropriated therefor by the Legislature, make grants or loans to the Corporation.

Grants or
loans

12.—(1) The fiscal year of the Corporation begins on the 1st day of April in each year and ends on the 31st day of March in the following year.

Fiscal year

(2) The Board shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit the accounts and transactions of the Corporation annually.

Audit
R.S.O. 1980,
c. 405

(3) The audit of the accounts of the Corporation is subject to the review of the Provincial Auditor.

Review by
Provincial
Auditor

13. The Corporation shall, after the close of each fiscal year, deliver to the Minister an annual report upon the affairs of the Corporation including the audited financial statements signed by the chairperson of the Board and one other director, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Annual
report

Crown
agency
R.S.O. 1980,
c. 106
Grant
payable in
1988

14. The Corporation is a Crown agency within the meaning of the *Crown Agency Act*.

15.—(1) Where the Minister is of the opinion that property taxes in the City of Toronto and The Municipality of Metropolitan Toronto may be increased as a result of,

- (a) the operation of subsection 16 (2); and
- (b) the requirement that outstanding taxes be struck off the roll in accordance with section 495 of the *Municipal Act*,

R.S.O. 1980,
c. 302

the Minister may, by order, make a grant to The Corporation of the City of Toronto and The Municipality of Metropolitan Toronto, in the year 1988, under such terms and conditions as the Minister considers necessary in the circumstances.

Funds for
grant

(2) The money required to pay the grant under subsection (1) shall be paid out of the Consolidated Revenue Fund.

Commence-
ment

16.—(1) This Act, except section 10, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Section 10 shall be deemed to have come into force on the 1st day of October, 1984.

Short title

17. The short title of this Act is the *Metropolitan Toronto Convention Centre Corporation Act, 1988*.

Bill 141

*(Chapter 52
Statutes of Ontario, 1988)*

An Act respecting Metropolitan Toronto Convention Centre Corporation

The Hon. H. O'Neil
Minister of Tourism and Recreation

<i>1st Reading</i>	May 25th, 1988
<i>2nd Reading</i>	June 22nd, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 141

1988

**An Act respecting Metropolitan
Toronto Convention Centre Corporation**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means the Board of Directors of the Corporation;

“Centre” means the Metro Toronto Convention Centre;

“Corporation” means Metropolitan Toronto Convention Centre Corporation;

“Minister” means the Minister of Tourism and Recreation or such other member of the Executive Council as the Lieutenant Governor in Council designates to administer this Act.

2.—(1) Metropolitan Toronto Convention Centre Corporation, a corporation incorporated under the *Corporations Act* by letters patent issued on the 4th day of February, 1981, is hereby continued as a corporation without share capital.

Corporation
continued

(2) The *Corporations Act* does not apply to the Corporation.

R.S.O. 1980,
c. 95 does
not apply

(3) The Corporation shall consist of not fewer than seven and not more than thirteen members of whom,

Composition

- (a) not more than ten shall be appointed by the Lieutenant Governor in Council; and
- (b) not more than three shall be appointed by resolution of the council of The Municipality of Metropolitan Toronto.

Term of
office

(4) Each member of the Corporation shall hold office for a term not exceeding three years and until his or her successor is appointed and is eligible for reappointment.

Board

3.—(1) The members of the Corporation form and are its Board of Directors.

Chairperson,
president

(2) The Lieutenant Governor in Council shall designate one of the directors as chairperson of the Board and another of the directors as president and chief executive officer of the Corporation.

Remuner-
ation and
expenses

(3) The Corporation may pay its directors such remuneration and expenses as are fixed by the Lieutenant Governor in Council.

Exception,
remuneration

(4) Despite subsection (3), the Corporation shall not pay remuneration to a director in his or her capacity as a director if he or she is,

(a) an employee of Her Majesty in right of Ontario or of an agency of Her Majesty in right of Ontario; or

R.S.O. 1980,
c. 302

(b) an employee, as defined in paragraph 46 of section 208 of the *Municipal Act*, of a municipality, including a district, metropolitan or regional municipality, or of a local board as defined in the said paragraph 46.

Disclosure:
conflict of
interest
1982, c. 4

(5) Section 132 of the *Business Corporations Act, 1982* applies with necessary modifications to members of the Board.

Chairperson
to preside

4.—(1) The chairperson shall preside at all meetings of the Board and, in the chairperson's absence, one of the directors present at the meeting who is chosen to act by the directors present at the meeting has all the powers and duties of the chairperson.

Quorum

(2) A majority of the directors constitutes a quorum for the transaction of business at meetings of the Board.

By-laws

(3) The Board may pass by-laws regulating its proceedings, specifying the powers and duties of the officers and employees of the Corporation, and generally for the conduct and management of the affairs of the Corporation.

Executive
committee

(4) The Board may appoint from its membership a committee of directors and delegate to such committee any of the powers of the Board.

(5) A by-law or resolution consented to by the signatures of all of the directors or all of the members of a committee established under subsection (4) is as valid and effective as if it had been passed at a meeting of the Board or committee, respectively, held for that purpose.

Approval of
by-law or
resolution

5. The Board shall manage and supervise the affairs of the Corporation.

Duties of
Board

6.—(1) The objects of the Corporation are to operate, maintain and manage an international class convention centre facility in The Municipality of Metropolitan Toronto to be known as the Metro Toronto Convention Centre in a manner that will promote and develop tourism and industry in Ontario.

Objects

(2) The Corporation, for the objects set out in subsection (1), has power,

Powers

- (a) to make agreements with persons with respect to the establishment or operation by them of any works or services in connection with the construction, operation and maintenance of the Centre;
- (b) to operate or grant leases for the operation of retail shops, restaurants, theatres, parking facilities, exhibition facilities, and any other facilities or conveniences incidental to or necessary to the operation of the Centre;
- (c) to buy, hold, own, hire, maintain, control, take, lease, sell, assign, exchange, transfer, manage, improve, develop or dispose of any real and personal property and any right or privilege that, in the opinion of the Board, is necessary or convenient for the purposes of the Corporation;
- (d) unless an order has been made under subsection 11 (2), temporarily to invest any surplus moneys not immediately required for the objects of the Corporation in,
 - (i) securities issued by or guaranteed as to principal and interest by the Province of Ontario, any other province of Canada, or Canada,
 - (ii) guaranteed investment certificates of any trust corporation that is registered under the *Loan and Trust Corporations Act, 1987*,

1980-81,
c. 40 (Can.)

- (iii) deposit receipts, deposit notes, certificates of deposits, acceptances and other similar instruments issued or endorsed by a bank named in Schedule A or B to the *Bank Act* (Canada) or with the Province of Ontario Savings Office, and

R.S.O. 1980,
c. 102

- (iv) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*;

- (e) with the approval of the Lieutenant Governor in Council,

- (i) to borrow money upon the credit of the Corporation,

- (ii) to issue, sell or pledge securities of the Corporation, and

- (iii) to charge, mortgage or pledge all or any currently owned or subsequently acquired real or personal property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed or other debt or liability of the Corporation;

- (f) to enter into agreements with The Municipality of Metropolitan Toronto for the use by the Corporation of services, equipment and facilities of The Municipality of Metropolitan Toronto; and

- (g) to do anything incidental to the attainment of the objects of the Corporation.

Head office

7.—(1) The Corporation's head office shall be in The Municipality of Metropolitan Toronto.

Seal

(2) The Corporation shall have a seal which shall be adopted by a resolution or by-law of the Board.

Staff

8.—(1) The Corporation may engage such persons as are considered necessary for the proper conduct of the affairs of the Corporation.

Use of
Government
facilities

(2) The Corporation may make use of such services and facilities, including the services of a public servant on secondment, as are provided to it by a ministry, board, commission or agency of the Government of Ontario.

9. No action or other proceeding for damages shall be instituted against a director or officer of the Corporation or a former director or officer of the Corporation for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Protection
from
personal
liability

10.—(1) The real property vested in or leased to the Corporation is exempt from taxation for municipal and school purposes so long as it is actually used and occupied for the purposes of the Corporation.

Tax
exemption

(2) For the purposes of subsection 219 (8) of the *Municipality of Metropolitan Toronto Act*, the exemption of real property from taxation granted under subsection (1) is deemed to be an exemption provided under section 3 of the *Assessment Act*.

Idem
R.S.O. 1980,
cc. 314, 31

11.—(1) The income, revenues and profits earned by the Corporation shall be applied only to the furtherance of the objects of the Corporation.

Earnings of
Corporation

(2) Any surplus moneys of the Corporation shall, on the order of the Lieutenant Governor in Council, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund.

Surplus
money

(3) The Minister may, out of the moneys appropriated therefor by the Legislature, make grants or loans to the Corporation.

Grants or
loans

12.—(1) The fiscal year of the Corporation begins on the 1st day of April in each year and ends on the 31st day of March in the following year.

Fiscal year

(2) The Board shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit the accounts and transactions of the Corporation annually.

Audit
R.S.O. 1980,
c. 405

(3) The audit of the accounts of the Corporation is subject to the review of the Provincial Auditor.

Review by
Provincial
Auditor

13. The Corporation shall, after the close of each fiscal year, deliver to the Minister an annual report upon the affairs of the Corporation including the audited financial statements signed by the chairperson of the Board and one other director, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Annual
report

Crown
agency
R.S.O. 1980,
c. 106
Grant
payable in
1988

14. The Corporation is a Crown agency within the meaning of the *Crown Agency Act*.

15.—(1) Where the Minister is of the opinion that property taxes in the City of Toronto and The Municipality of Metropolitan Toronto may be increased as a result of,

(a) the operation of subsection 16 (2); and

(b) the requirement that outstanding taxes be struck off the roll in accordance with section 495 of the *Municipal Act*,

R.S.O.1980,
c. 302

the Minister may, by order, make a grant to The Corporation of the City of Toronto and The Municipality of Metropolitan Toronto, in the year 1988, under such terms and conditions as the Minister considers necessary in the circumstances.

Funds for
grant

(2) The money required to pay the grant under subsection (1) shall be paid out of the Consolidated Revenue Fund.

Commence-
ment

16.—(1) This Act, except section 10, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Idem

(2) Section 10 shall be deemed to have come into force on the 1st day of October, 1984.

Short title

17. The short title of this Act is the *Metropolitan Toronto Convention Centre Corporation Act, 1988*.

Bill 142

An Act respecting Ottawa Congress Centre

The Hon. H. O'Neil
Minister of Tourism and Recreation

1st Reading May 25th, 1988
2nd Reading
3rd Reading
Royal Assent

Projet de loi 142

Loi concernant le Centre des congrès d'Ottawa

L'honorable H. O'Neil
ministre du Tourisme et des Loisirs

1^{re} lecture 25 mai 1988
2^e lecture
3^e lecture
sanction royale

EXPLANATORY NOTE

The Bill incorporates Ottawa Congress Centre, whose objects are set out in subsection 6 (1).

NOTES EXPLICATIVES

Le projet de loi constitue en personne morale le Centre des congrès d'Ottawa dont l'objet est décrit au paragraphe 6 (1).

Bill 142

1988

**An Act respecting
Ottawa Congress Centre**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"conseil"

"Board" means the Board of Directors of the Centre;

"Centre"

"Centre" means Ottawa Congress Centre;

"ministre"

"Minister" means the Minister of Tourism and Recreation or such other member of the Executive Council as the Lieutenant Governor in Council designates to administer this Act.

Corporation
established

2.—(1) There is hereby incorporated a corporation without share capital under the name "Ottawa Congress Centre".

R.S.O. 1980,
c. 95 does
not apply

(2) The *Corporations Act* does not apply to the Centre.

Composition

(3) The Centre shall consist of not fewer than seven and not more than twelve members of whom,

(a) not more than nine shall be appointed by the Lieutenant Governor in Council; and

(b) not more than three shall be appointed by resolution of the council of The Regional Municipality of Ottawa-Carleton.

Vacancies

(4) The Lieutenant Governor in Council may fill any vacancy among the members of the Centre.

Term of
office

(5) Each member of the Centre shall hold office for a term not exceeding three years and until his or her successor is appointed and is eligible for reappointment.

Projet de loi 142**1988****Loi concernant le
Centre des congrès d'Ottawa**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

- 1** Les définitions qui suivent s'appliquent à la présente loi. Définitions
- «Centre» Le Centre des congrès d'Ottawa. «Centre»
- «conseil» Le conseil d'administration du Centre. «Board»
- «ministre» Le ministre du Tourisme et des Loisirs ou l'autre membre du Conseil des ministres que le lieutenant-gouverneur en conseil charge de l'application de la présente loi. «Minister»
- 2** (1) Est créée la personne morale sans capital-actions nommée «Centre des congrès d'Ottawa». Création d'une personne morale
- (2) La *Loi sur les compagnies et associations* ne s'applique pas au Centre. Non-application du chap. 95 des L.R.O. de 1980
- (3) Le Centre se compose d'au moins sept et d'au plus douze membres, dont : Composition
- a) pas plus de neuf sont nommés par le lieutenant-gouverneur en conseil;
- b) pas plus de trois sont nommés par résolution du conseil de la municipalité régionale d'Ottawa-Carleton.
- (4) Le lieutenant-gouverneur en conseil peut combler la vacance survenue au sein des membres du Centre. Vacance d'un poste
- (5) Les membres du Centre sont en fonction pour une durée maximale de trois ans et jusqu'à la nomination de leur successeur. Leur mandat est renouvelable. Mandat

Board **3.**—(1) The members of the Centre form and are its Board of Directors.

Chairperson (2) The Lieutenant Governor in Council shall designate one of the directors as chairperson of the Board.

Remuneration and expenses (3) The Centre may pay its directors such remuneration and expenses as are fixed by the Lieutenant Governor in Council.

Exception, remuneration (4) Despite subsection (3), the Centre shall not pay remuneration to a director in his or her capacity as a director if he or she is,

(a) an employee of Her Majesty in right of Ontario or of an agency of Her Majesty in right of Ontario; or

R.S.O. 1980, c. 302 (b) an employee, as defined in paragraph 46 of section 208 of the *Municipal Act*, of a municipality, including a district, metropolitan or regional municipality, or of a local board as defined in the said paragraph 46.

Disclosure: conflict of interest (5) Section 132 of the *Business Corporations Act*, 1982 applies with necessary modifications to members of the Board.
1982, c. 4

Chairperson to preside **4.**—(1) The chairperson shall preside at all meetings of the Board and, in the chairperson's absence, one of the directors present at the meeting who is chosen to act by the directors present at the meeting has all the powers and duties of the chairperson.

Quorum (2) A majority of the directors constitutes a quorum for the transaction of business at meetings of the Board.

By-laws (3) The Board may pass by-laws regulating its proceedings, specifying the powers and duties of the officers and employees of the Centre, and generally for the conduct and management of the affairs of the Centre.

Executive committee (4) The Board may appoint from its membership a committee of directors and delegate to such committee any of the powers of the Board.

Approval of by-law or resolution (5) A by-law or resolution consented to by the signatures of all the directors or all of the members of a committee established under subsection (4) is as valid and effective as if it had been passed at a meeting of the Board or committee, respectively, held for that purpose.

- 3** (1) Les membres du Centre forment son conseil d'administration. Conseil
- (2) Le lieutenant-gouverneur en conseil nomme un des administrateurs à la présidence du conseil. Président
- (3) Le Centre peut verser à ses administrateurs la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil. Rémunération et indemnités
- (4) Malgré le paragraphe (3), le Centre ne verse à l'administrateur aucune rémunération en cette qualité, si celui-ci est :
- a) un employé de Sa Majesté du chef de l'Ontario ou de l'un de ses organismes;
 - b) un employé, au sens de la disposition 46 de l'article 208 de la *Loi sur les municipalités*, soit d'une municipalité, y compris une municipalité régionale, de district ou de communauté urbaine, soit d'un conseil local au sens de cette disposition. L.R.O. 1980, chap. 302
- (5) L'article 132 de la *Loi de 1982 sur les compagnies*, s'applique, avec les adaptations nécessaires, aux membres du conseil. Divulcation visant les conflits d'intérêts 1982, chap. 4
- 4** (1) Le président préside les réunions du conseil. En cas d'absence du président, les administrateurs présents à la réunion choisissent parmi eux un administrateur qui est investi des pouvoirs du président et en exerce les fonctions. Présidence des réunions
- (2) La majorité des administrateurs constitue le quorum pour traiter les affaires aux réunions du conseil. Quorum
- (3) Le conseil peut adopter des règlements intérieurs régissant ses délibérations, précisant les pouvoirs et les fonctions des dirigeants et employés du Centre et traitant de façon générale de l'administration et de la direction des affaires du Centre. Règlements intérieurs
- (4) Le conseil peut choisir parmi ses membres un comité d'administrateurs auquel il peut déléguer l'ensemble ou une partie de ses pouvoirs. Comité directeur
- (5) Le règlement intérieur ou la résolution signés par tous les administrateurs ou par tous les membres du comité créé en vertu du paragraphe (4), ont la même valeur et le même effet que s'ils avaient été adoptés à une réunion du conseil ou du comité convoquée à cette fin. Approbation du règlement intérieur ou de la résolution

Duties of
Board

5. The Board shall manage and supervise the affairs of the Centre.

Objects

6.—(1) The objects of the Centre are to operate, maintain and manage an international class convention centre facility in The Regional Municipality of Ottawa-Carleton to be known as Ottawa Congress Centre in a manner that will promote and develop tourism and industry in Ontario.

Powers

(2) The Centre, for the objects set out in subsection (1), has power,

- (a) to make agreements with persons with respect to the establishment or operation by them of any works or services in connection with the construction, operation and maintenance of the Centre;
- (b) to operate or grant leases for the operation of retail shops, restaurants, theatres, parking facilities, exhibition facilities, and any other facilities or conveniences incidental to or necessary to the operation of the Centre;
- (c) to buy, hold, own, hire, maintain, control, take, lease, sell, assign, exchange, transfer, manage, improve, develop or dispose of any real and personal property and any right or privilege that, in the opinion of the Board, is necessary or convenient for the purposes of the Centre;
- (d) unless an order has been made under subsection 11 (2), to invest temporarily any surplus moneys not immediately required for the objects of the Centre in,
 - (i) securities issued by or guaranteed as to principal and interest by the Province of Ontario, any other province of Canada, or Canada,
 - (ii) guaranteed investment certificates of a trust corporation that is registered under the *Loan and Trust Corporations Act, 1987*,
 - (iii) deposit receipts, deposit notes, certificates of deposits, acceptances and other similar instruments issued or endorsed by a bank named in Schedule A or B to the *Bank Act* (Canada) or with the Province of Ontario Savings Office, and

1987, c. 33

1980-81,
c. 40 (Can.)

5 Le conseil assure la direction et la surveillance des affaires du Centre. Fonctions du conseil

6 (1) Le Centre a pour objet d'assurer, dans la municipalité régionale d'Ottawa-Carleton, le fonctionnement et la gestion d'un centre de congrès de classe internationale, nommé «Centre des congrès d'Ottawa», de manière à encourager et à développer le tourisme et l'industrie en Ontario. Objet

(2) Le Centre, aux fins de réaliser son objet décrit au paragraphe (1), a le pouvoir : Pouvoirs

- a) de conclure avec quiconque des accords relatifs à la mise en place et à l'exploitation d'ouvrages et de services à l'égard de la construction et du fonctionnement du Centre;
- b) d'exploiter ou de donner à bail des boutiques, restaurants, théâtres, installations de stationnement et d'expositions, de même que des installations ou avantages connexes ou nécessaires au fonctionnement du Centre;
- c) d'acheter, de détenir, de posséder à titre de propriétaire, de louer, de conserver, de contrôler, de prendre, de donner à bail, de vendre, de céder, d'échanger, de transférer, de gérer, d'améliorer, de mettre en valeur ou d'aliéner des biens meubles et immeubles de même que des droits ou privilèges qui, de l'avis du conseil, sont utiles ou nécessaires au Centre dans la poursuite de ses objectifs;
- d) de placer provisoirement, sous réserve du décret pris en application du paragraphe 11 (2) des sommes d'argent excédentaires qui ne sont pas immédiatement requises aux fins de réaliser l'objet du Centre dans :
 - (i) des valeurs mobilières émises ou garanties, quant au principal et aux intérêts, par la province de l'Ontario, par une autre province du Canada ou par le Canada,
 - (ii) des certificats de placement garantis d'une compagnie de fiducie inscrite aux termes de la *Loi de 1987 sur les compagnies de prêt et de fiducie*,
 - (iii) des récépissés, billets ou certificats de dépôts, des acceptations ou d'autres effets semblables émis ou visés par une banque désignée à l'an-

1987,
chap. 33

R.S.O. 1980,
c. 102

- (iv) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*;
- (e) with the approval of the Lieutenant Governor in Council,
 - (i) to borrow money upon the credit of the Centre,
 - (ii) to issue, sell or pledge securities of the Centre, and
 - (iii) to charge, mortgage or pledge all or any currently owned or subsequently acquired real or personal property of the Centre, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed or other debt or liability of the Centre;
- (f) to enter into agreements with The Regional Municipality of Ottawa-Carleton for the use by the Centre of services, equipment and facilities of The Regional Municipality of Ottawa-Carleton; and
- (g) to do anything incidental to the attainment of the objects of the Centre.

Head office

7.—(1) The head office of the Centre shall be in The Regional Municipality of Ottawa-Carleton.

Seal

(2) The Centre shall have a seal which shall be adopted by a resolution or by-law of the Board.

Staff

8.—(1) The Centre may engage such persons as are considered necessary for the proper conduct of the affairs of the Centre.

Use of
Government
facilities

(2) The Centre may make use of such services and facilities, including the services of a public servant on secondment, as are provided to it by a ministry, board, commission or agency of the Government of Ontario.

Protection
from
personal
liability

9. No action or proceeding for damages shall be instituted against a director or officer of the Centre or a former director or officer of the Centre for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

nexe A ou B de la *Loi sur les banques* (Canada) ou par la Caisse d'épargne de l'Ontario, 1980-1981, chap. 40 (Can.)

(iv) des dépôts à terme acceptés par une caisse au sens de la *Loi sur les caisses populaires et les crédit unions*; L.R.O. 1980, chap. 102

e) avec l'approbation du lieutenant-gouverneur en conseil :

(i) de contracter des emprunts sur le crédit du Centre,

(ii) d'émettre, de vendre ou de nantir des valeurs mobilières du Centre,

(iii) de grever, d'hypothéquer ou de nantir la totalité ou une partie des biens meubles ou immeubles qui appartiennent ou appartiendront au Centre, y compris les comptes créditeurs, les droits, pouvoirs, concessions et engagements qui ont pu être pris envers celui-ci aux fins de garantir un titre de créance, un emprunt, une dette ou une obligation du Centre;

f) de conclure avec la municipalité régionale d'Ottawa-Carleton des accords relatifs à l'utilisation par le Centre de services, de matériel et d'installations appartenant à cette municipalité;

g) de faire tout ce qui est lié à la réalisation de l'objet du Centre.

7 (1) Le siège social du Centre est situé dans la municipalité régionale d'Ottawa-Carleton. Siège social

(2) Le Centre a un sceau, que le conseil adopte par résolution ou par règlement intérieur. Sceau

8 (1) Le Centre peut se doter du personnel nécessaire à la conduite efficace de ses affaires. Personnel

(2) Le Centre peut se prévaloir des services et des installations que lui fournissent les ministères, commissions ou organismes du gouvernement de l'Ontario, y compris les services d'un fonctionnaire en détachement. Utilisation des installations du gouvernement

9 Sont irrecevables les actions ou instances en dommages-intérêts intentées contre l'administrateur ou le dirigeant Immunité

Tax
exemption

10.—(1) The real property vested in or leased to the Centre is exempt from taxation for municipal and school purposes so long as it is actually used and occupied for the purposes of the Centre.

Idem
R.S.O. 1980,
c. 439

(2) For the purposes of subsection 121 (10) of the *Regional Municipality of Ottawa-Carleton Act*, the exemption of real property from taxation granted under subsection (1) is deemed to be an exemption provided under section 3 of the *Assessment Act*.

R.S.O. 1980,
c. 31

Earnings of
Centre

11.—(1) The income, revenues and profits earned by the Centre shall be applied only to the furtherance of the objects of the Centre.

Surplus
money

(2) Any surplus moneys of the Centre shall, on the order of the Lieutenant Governor in Council, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund.

Grants or
loans

(3) The Minister may, out of the moneys appropriated therefor by the Legislature, make grants or loans to the Centre.

Fiscal year

12.—(1) The fiscal year of the Centre begins on the 1st day of April in each year and ends on the 31st day of March in the following year.

Auditors
R.S.O. 1980,
c. 405

(2) The Board shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit the accounts and transactions of the Centre annually.

Review by
Provincial
Auditor

(3) The audit of the accounts of the Centre is subject to the review of the Provincial Auditor.

Annual
report

13. The Centre shall, after the close of each fiscal year, deliver to the Minister an annual report upon the affairs of the Centre including the audited financial statements signed by the chairperson of the Board and one other director, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Crown
agency
R.S.O. 1980,
c. 106

14. The Centre is a Crown agency within the meaning of the *Crown Agency Act*.

ancien ou actuel du Centre pour un acte accompli de bonne foi dans l'exercice ou l'exercice prévu de ses fonctions ou pour une négligence ou un défaut reproché dans l'exercice de bonne foi de ses fonctions.

10 (1) Les biens immeubles acquis ou loués au Centre font l'objet d'une exonération de l'impôt aux fins municipales et scolaires tant qu'ils sont effectivement utilisés et occupés aux fins du Centre.

Exonération
de l'impôt

(2) Pour l'application du paragraphe 121 (10) de la *Loi sur la municipalité régionale d'Ottawa-Carleton*, l'exonération d'impôts accordée en vertu du paragraphe (1), à l'égard des biens immeubles, est réputée l'exonération visée à l'article 3 de la *Loi sur l'évaluation foncière*.

Idem
L.R.O. 1980,
chap. 439

L.R.O. 1980,
chap. 31

11 (1) Les recettes, revenus et bénéfices réalisés par le Centre sont imputés uniquement à la réalisation de son objet.

Revenus du
Centre

(2) Par décret du lieutenant-gouverneur en conseil, les sommes d'argent excédentaires provenant du Centre sont versées au trésorier de l'Ontario et font partie du Fonds du revenu consolidé.

Sommes
d'argent
excédentaires

(3) Le ministre peut, sur les sommes affectées à cette fin par la Législature, consentir au Centre des subventions ou des prêts.

Subventions et
prêts

12 (1) L'exercice du Centre commence le 1^{er} avril et se termine le 31 mars de l'année suivante.

Exercice

(2) Le conseil charge un ou plusieurs vérificateurs titulaires d'un permis délivré en vertu de la *Loi sur les experts-comptables* de vérifier chaque année les comptes et les opérations du Centre.

Vérificateurs
L.R.O. 1980,
chap. 405

(3) La vérification des comptes du Centre est susceptible d'être révisée par le vérificateur provincial.

Révision par
le vérificateur
provincial

13 Au terme de chaque exercice, le Centre présente au ministre un rapport annuel sur les affaires du Centre, y compris les états financiers vérifiés, signés par le président du conseil et par un autre administrateur. Le ministre présente le rapport au lieutenant-gouverneur en conseil et le dépose ensuite devant l'Assemblée. Si celle-ci ne siège pas, il le dépose à la session suivante.

Rapport
annuel

14 Le Centre constitue un organisme de la Couronne au sens de la *Loi sur les organismes de la Couronne*.

Organisme de
la Couronne
L.R.O. 1980,
chap. 106

Interpretation

R.S.O. 1980,
c. 439

15.—(1) In this section, “board of management” means the board of management established under the authority of section 182 of the *Regional Municipality of Ottawa-Carleton Act* and known as Canada’s Capital Congress Centre Board of Management.

Board of
management
dissolved

(2) The board of management is dissolved and the Centre shall stand in the place of the board of management.

Transfer of
employees

(3) Every person employed under an agreement between the person and the board of management immediately before the coming into force of this Act shall be deemed to be an employee of the Centre on the same terms and conditions as prevailed between the person and the board of management and the Centre shall be deemed to be a party to every such agreement as if the Centre were the board of management.

Rights and
liabilities
continued

(4) The Centre possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the board of management.

Transfer of
title
R.S.O. 1980,
cc. 445, 230,
43, 52

(5) For the purposes of the *Registry Act*, the *Land Titles Act*, the *Bills of Sale Act*, the *Bulk Sales Act* and any other Act affecting title to the property, it is sufficient to cite this Act to show the transmission of title to the Centre and the vesting therein of any real or personal property or any interest therein and the transfer of assets effected by this section shall be deemed to have been made in conformity with each of those Acts.

16. Section 182 of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 26, section 14, is repealed.

Commence-
ment

17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18. The short title of this Act is the *Ottawa Congress Centre Act, 1988*.

15 (1) Dans le présent article, «conseil de gestion» s'entend du conseil de gestion créé en vertu de l'article 182 de la *Loi sur la municipalité régionale d'Ottawa-Carleton*, nommé «Canada's Capital Congress Centre Board of Management».

Interprétation

L.R.O. 1980,
chap. 439

(2) Le conseil de gestion est dissous et est remplacé par le Centre.

Dissolution du
conseil de
gestion

(3) La personne qui, immédiatement avant l'entrée en vigueur de la présente loi était employée aux termes d'un accord conclu entre elle et le conseil de gestion, est réputée un employé du Centre aux conditions qui avaient cours en vertu de cet accord. Le Centre est réputé une partie à chacun de ces accords, aux lieu et place du conseil de gestion.

Cession de
l'entreprise

(4) Les biens, droits, privilèges et concessions du conseil de gestion passent au Centre, auquel sont imposés les obligations, contrats, incapacités et dettes, de même que toute responsabilité civile, pénale ou quasi-pénale du conseil de gestion.

Les droits et
obligations
demeurent

(5) Pour l'application de la *Loi sur l'enregistrement des actes*, de la *Loi sur l'enregistrement des droits immobiliers*, de la *Loi sur les actes de vente d'objets*, de la *Loi sur la vente en bloc* et de toute autre loi ayant une incidence sur le titre de propriété, il suffit d'invoquer la présente loi pour établir la transmission du titre en faveur du Centre. L'acquisition au Centre des biens meubles et immeubles et des droits qui s'y rattachent, de même que la cession des biens de l'actif effectuée par le présent article, sont réputées avoir été faites conformément à chacune de ces lois.

Cession du
titre
L.R.O. 1980,
chap. 445,
230, 43, 52

16 L'article 182 de la *Loi sur la municipalité régionale d'Ottawa-Carleton*, qui constitue le chapitre 439 des Lois refondues de l'Ontario de 1980, tel qu'il est modifié par l'article 14 du chapitre 26 des Lois de l'Ontario de 1982, est abrogé.

17 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en
vigueur

18 Le titre abrégé de la présente loi est *Loi de 1988 sur le Centre des congrès d'Ottawa*.

Titre abrégé

Bill 142

*(Chapter 53
Statutes of Ontario, 1988)*

An Act respecting Ottawa Congress Centre

The Hon. H. O'Neil
Minister of Tourism and Recreation

<i>1st Reading</i>	May 25th, 1988
<i>2nd Reading</i>	June 22nd, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Projet de loi 142

*(Chapitre 53
Lois de l'Ontario de 1988)*

Loi concernant le Centre des congrès d'Ottawa

L'honorable H. O'Neil
ministre du Tourisme et des Loisirs

<i>1^{re} lecture</i>	25 mai 1988
<i>2^e lecture</i>	22 juin 1988
<i>3^e lecture</i>	29 juin 1988
<i>sanction royale</i>	29 juin 1988

Bill 142

1988

**An Act respecting
Ottawa Congress Centre**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"conseil"

"Board" means the Board of Directors of the Centre;

"Centre"

"Centre" means Ottawa Congress Centre;

"ministre"

"Minister" means the Minister of Tourism and Recreation or such other member of the Executive Council as the Lieutenant Governor in Council designates to administer this Act.

Corporation
established

2.—(1) There is hereby incorporated a corporation without share capital under the name "Ottawa Congress Centre".

R.S.O. 1980,
c. 95 does
not apply

(2) The *Corporations Act* does not apply to the Centre.

Composition

(3) The Centre shall consist of not fewer than seven and not more than twelve members of whom,

- (a) not more than nine shall be appointed by the Lieutenant Governor in Council; and
- (b) not more than three shall be appointed by resolution of the council of The Regional Municipality of Ottawa-Carleton.

Vacancies

(4) The Lieutenant Governor in Council may fill any vacancy among the members of the Centre.

Term of
office

(5) Each member of the Centre shall hold office for a term not exceeding three years and until his or her successor is appointed and is eligible for reappointment.

Projet de loi 142**1988****Loi concernant le
Centre des congrès d'Ottawa**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

- 1** Les définitions qui suivent s'appliquent à la présente loi. Définitions
- «Centre» Le Centre des congrès d'Ottawa. «Centre»
- «conseil» Le conseil d'administration du Centre. «Board»
- «ministre» Le ministre du Tourisme et des Loisirs ou l'autre membre du Conseil des ministres que le lieutenant-gouverneur en conseil charge de l'application de la présente loi. «Minister»
- 2** (1) Est créée la personne morale sans capital-actions nommée «Centre des congrès d'Ottawa». Création d'une personne morale
- (2) La *Loi sur les compagnies et associations* ne s'applique pas au Centre. Non-application du chap. 95 des L.R.O. de 1980
- (3) Le Centre se compose d'au moins sept et d'au plus douze membres, dont : Composition
- a) pas plus de neuf sont nommés par le lieutenant-gouverneur en conseil;
- b) pas plus de trois sont nommés par résolution du conseil de la municipalité régionale d'Ottawa-Carleton.
- (4) Le lieutenant-gouverneur en conseil peut combler la vacance survenue au sein des membres du Centre. Vacance d'un poste
- (5) Les membres du Centre sont en fonction pour une durée maximale de trois ans et jusqu'à la nomination de leur successeur. Leur mandat est renouvelable. Mandat

- Board **3.—**(1) The members of the Centre form and are its Board of Directors.
- Chairperson (2) The Lieutenant Governor in Council shall designate one of the directors as chairperson of the Board.
- Remuneration and expenses (3) The Centre may pay its directors such remuneration and expenses as are fixed by the Lieutenant Governor in Council.
- Exception, remuneration (4) Despite subsection (3), the Centre shall not pay remuneration to a director in his or her capacity as a director if he or she is,
- (a) an employee of Her Majesty in right of Ontario or of an agency of Her Majesty in right of Ontario; or
- (b) an employee, as defined in paragraph 46 of section 208 of the *Municipal Act*, of a municipality, including a district, metropolitan or regional municipality, or of a local board as defined in the said paragraph 46.
- R.S.O. 1980, c. 302
- Disclosure: conflict of interest (5) Section 132 of the *Business Corporations Act*, 1982 applies with necessary modifications to members of the Board.
- 1982, c. 4
- Chairperson to preside **4.—**(1) The chairperson shall preside at all meetings of the Board and, in the chairperson's absence, one of the directors present at the meeting who is chosen to act by the directors present at the meeting has all the powers and duties of the chairperson.
- Quorum (2) A majority of the directors constitutes a quorum for the transaction of business at meetings of the Board.
- By-laws (3) The Board may pass by-laws regulating its proceedings, specifying the powers and duties of the officers and employees of the Centre, and generally for the conduct and management of the affairs of the Centre.
- Executive committee (4) The Board may appoint from its membership a committee of directors and delegate to such committee any of the powers of the Board.
- Approval of by-law or resolution (5) A by-law or resolution consented to by the signatures of all the directors or all of the members of a committee established under subsection (4) is as valid and effective as if it had been passed at a meeting of the Board or committee, respectively, held for that purpose.

- 3** (1) Les membres du Centre forment son conseil d'administration. Conseil
- (2) Le lieutenant-gouverneur en conseil nomme un des administrateurs à la présidence du conseil. Président
- (3) Le Centre peut verser à ses administrateurs la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil. Rémunération et indemnités
- (4) Malgré le paragraphe (3), le Centre ne verse à l'administrateur aucune rémunération en cette qualité, si celui-ci est : Exception visant la rémunération
- a) un employé de Sa Majesté du chef de l'Ontario ou de l'un de ses organismes;
 - b) un employé, au sens de la disposition 46 de l'article 208 de la *Loi sur les municipalités*, soit d'une municipalité, y compris une municipalité régionale, de district ou de communauté urbaine, soit d'un conseil local au sens de cette disposition. L.R.O. 1980, chap. 302
- (5) L'article 132 de la *Loi de 1982 sur les compagnies s'applique*, avec les adaptations nécessaires, aux membres du conseil. Divulgarion visant les conflits d'intérêts 1982, chap. 4
- 4** (1) Le président préside les réunions du conseil. En cas d'absence du président, les administrateurs présents à la réunion choisissent parmi eux un administrateur qui est investi des pouvoirs du président et en exerce les fonctions. Présidence des réunions
- (2) La majorité des administrateurs constitue le quorum pour traiter les affaires aux réunions du conseil. Quorum
- (3) Le conseil peut adopter des règlements intérieurs régissant ses délibérations, précisant les pouvoirs et les fonctions des dirigeants et employés du Centre et traitant de façon générale de l'administration et de la direction des affaires du Centre. Règlements intérieurs
- (4) Le conseil peut choisir parmi ses membres un comité d'administrateurs auquel il peut déléguer l'ensemble ou une partie de ses pouvoirs. Comité directeur
- (5) Le règlement intérieur ou la résolution signés par tous les administrateurs ou par tous les membres du comité créé en vertu du paragraphe (4), ont la même valeur et le même effet que s'ils avaient été adoptés à une réunion du conseil ou du comité convoquée à cette fin. Approbation du règlement intérieur ou de la résolution

Duties of
Board

5. The Board shall manage and supervise the affairs of the Centre.

Objects

6.—(1) The objects of the Centre are to operate, maintain and manage an international class convention centre facility in The Regional Municipality of Ottawa-Carleton to be known as Ottawa Congress Centre in a manner that will promote and develop tourism and industry in Ontario.

Powers

(2) The Centre, for the objects set out in subsection (1), has power,

- (a)** to make agreements with persons with respect to the establishment or operation by them of any works or services in connection with the construction, operation and maintenance of the Centre;
- (b)** to operate or grant leases for the operation of retail shops, restaurants, theatres, parking facilities, exhibition facilities, and any other facilities or conveniences incidental to or necessary to the operation of the Centre;
- (c)** to buy, hold, own, hire, maintain, control, take, lease, sell, assign, exchange, transfer, manage, improve, develop or dispose of any real and personal property and any right or privilege that, in the opinion of the Board, is necessary or convenient for the purposes of the Centre;
- (d)** unless an order has been made under subsection 11 (2), to invest temporarily any surplus moneys not immediately required for the objects of the Centre in,

 - (i)** securities issued by or guaranteed as to principal and interest by the Province of Ontario, any other province of Canada, or Canada,
 - (ii)** guaranteed investment certificates of a trust corporation that is registered under the *Loan and Trust Corporations Act, 1987*,
 - (iii)** deposit receipts, deposit notes, certificates of deposits, acceptances and other similar instruments issued or endorsed by a bank named in Schedule A or B to the *Bank Act (Canada)* or with the Province of Ontario Savings Office, and

1987, c. 33

1980-81,
c. 40 (Can.)

5 Le conseil assure la direction et la surveillance des affaires du Centre. Fonctions du conseil

6 (1) Le Centre a pour objet d'assurer, dans la municipalité régionale d'Ottawa-Carleton, le fonctionnement et la gestion d'un centre de congrès de classe internationale, nommé «Centre des congrès d'Ottawa», de manière à encourager et à développer le tourisme et l'industrie en Ontario. Objet

(2) Le Centre, aux fins de réaliser son objet décrit au paragraphe (1), a le pouvoir : Pouvoirs

- a) de conclure avec quiconque des accords relatifs à la mise en place et à l'exploitation d'ouvrages et de services à l'égard de la construction et du fonctionnement du Centre;
- b) d'exploiter ou de donner à bail des boutiques, restaurants, théâtres, installations de stationnement et d'expositions, de même que des installations ou avantages connexes ou nécessaires au fonctionnement du Centre;
- c) d'acheter, de détenir, de posséder à titre de propriétaire, de louer, de conserver, de contrôler, de prendre, de donner à bail, de vendre, de céder, d'échanger, de transférer, de gérer, d'améliorer, de mettre en valeur ou d'aliéner des biens meubles et immeubles de même que des droits ou privilèges qui, de l'avis du conseil, sont utiles ou nécessaires au Centre dans la poursuite de ses objectifs;
- d) de placer provisoirement, sous réserve du décret pris en application du paragraphe 11 (2), des sommes d'argent excédentaires qui ne sont pas immédiatement requises aux fins de réaliser l'objet du Centre dans :
 - (i) des valeurs mobilières émises ou garanties, quant au principal et aux intérêts, par la province de l'Ontario, par une autre province du Canada ou par le Canada,
 - (ii) des certificats de placement garantis d'une compagnie de fiducie inscrite aux termes de la *Loi de 1987 sur les compagnies de prêt et de fiducie*,
 - (iii) des récépissés, billets ou certificats de dépôts, des acceptations ou d'autres effets semblables émis ou visés par une banque désignée à l'an-

1987,
chap. 33

R.S.O. 1980,
c. 102

- (iv) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*;
- (e) with the approval of the Lieutenant Governor in Council,
 - (i) to borrow money upon the credit of the Centre,
 - (ii) to issue, sell or pledge securities of the Centre, and
 - (iii) to charge, mortgage or pledge all or any currently owned or subsequently acquired real or personal property of the Centre, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed or other debt or liability of the Centre;
- (f) to enter into agreements with The Regional Municipality of Ottawa-Carleton for the use by the Centre of services, equipment and facilities of The Regional Municipality of Ottawa-Carleton; and
- (g) to do anything incidental to the attainment of the objects of the Centre.

Head office

7.—(1) The head office of the Centre shall be in The Regional Municipality of Ottawa-Carleton.

Seal

(2) The Centre shall have a seal which shall be adopted by a resolution or by-law of the Board.

Staff

8.—(1) The Centre may engage such persons as are considered necessary for the proper conduct of the affairs of the Centre.

Use of
Government
facilities

(2) The Centre may make use of such services and facilities, including the services of a public servant on secondment, as are provided to it by a ministry, board, commission or agency of the Government of Ontario.

Protection
from
personal
liability

9. No action or proceeding for damages shall be instituted against a director or officer of the Centre or a former director or officer of the Centre for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

nexe A ou B de la *Loi sur les banques* (Canada) ou par la Caisse d'épargne de l'Ontario, 1980-1981, chap. 40 (Can.)

- (iv) des dépôts à terme acceptés par une caisse au sens de la *Loi sur les caisses populaires et les credit unions*; L.R.O. 1980, chap. 102

e) avec l'approbation du lieutenant-gouverneur en conseil :

- (i) de contracter des emprunts sur le crédit du Centre,
- (ii) d'émettre, de vendre ou de nantir des valeurs mobilières du Centre,
- (iii) de grever, d'hypothéquer ou de nantir la totalité ou une partie des biens meubles ou immeubles qui appartiennent ou appartiendront au Centre, y compris les comptes créditeurs, les droits, pouvoirs, concessions et engagements qui ont pu être pris envers celui-ci aux fins de garantir un titre de créance, un emprunt, une dette ou une obligation du Centre;
- f) de conclure avec la municipalité régionale d'Ottawa-Carleton des accords relatifs à l'utilisation par le Centre de services, de matériel et d'installations appartenant à cette municipalité;
- g) de faire tout ce qui est lié à la réalisation de l'objet du Centre.

7 (1) Le siège social du Centre est situé dans la municipalité régionale d'Ottawa-Carleton. Siège social

(2) Le Centre a un sceau, que le conseil adopte par résolution ou par règlement intérieur. Sceau

8 (1) Le Centre peut se doter du personnel nécessaire à la conduite efficace de ses affaires. Personnel

(2) Le Centre peut se prévaloir des services et des installations que lui fournissent les ministères, commissions ou organismes du gouvernement de l'Ontario, y compris les services d'un fonctionnaire en détachement. Utilisation des installations du gouvernement

9 Sont irrecevables les actions ou instances en dommages-intérêts intentées contre l'administrateur ou le dirigeant Immunité

Tax
exemption

10.—(1) The real property vested in or leased to the Centre is exempt from taxation for municipal and school purposes so long as it is actually used and occupied for the purposes of the Centre.

Idem
R.S.O. 1980,
c. 439

(2) For the purposes of subsection 121 (10) of the *Regional Municipality of Ottawa-Carleton Act*, the exemption of real property from taxation granted under subsection (1) is deemed to be an exemption provided under section 3 of the *Assessment Act*.

R.S.O. 1980,
c. 31

Earnings of
Centre

11.—(1) The income, revenues and profits earned by the Centre shall be applied only to the furtherance of the objects of the Centre.

Surplus
money

(2) Any surplus moneys of the Centre shall, on the order of the Lieutenant Governor in Council, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund.

Grants or
loans

(3) The Minister may, out of the moneys appropriated therefor by the Legislature, make grants or loans to the Centre.

Fiscal year

12.—(1) The fiscal year of the Centre begins on the 1st day of April in each year and ends on the 31st day of March in the following year.

Auditors
R.S.O. 1980,
c. 405

(2) The Board shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit the accounts and transactions of the Centre annually.

Review by
Provincial
Auditor

(3) The audit of the accounts of the Centre is subject to the review of the Provincial Auditor.

Annual
report

13. The Centre shall, after the close of each fiscal year, deliver to the Minister an annual report upon the affairs of the Centre including the audited financial statements signed by the chairperson of the Board and one other director, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Crown
agency
R.S.O. 1980,
c. 106

14. The Centre is a Crown agency within the meaning of the *Crown Agency Act*.

ancien ou actuel du Centre pour un acte accompli de bonne foi dans l'exercice ou l'exercice prévu de ses fonctions ou pour une négligence ou un défaut reproché dans l'exercice de bonne foi de ses fonctions.

10 (1) Les biens immeubles acquis ou loués au Centre font l'objet d'une exonération de l'impôt aux fins municipales et scolaires tant qu'ils sont effectivement utilisés et occupés aux fins du Centre.

Exonération
de l'impôt

(2) Pour l'application du paragraphe 121 (10) de la *Loi sur la municipalité régionale d'Ottawa-Carleton*, l'exonération d'impôts accordée en vertu du paragraphe (1), à l'égard des biens immeubles, est réputée l'exonération visée à l'article 3 de la *Loi sur l'évaluation foncière*.

Idem
L.R.O. 1980,
chap. 439

L.R.O. 1980,
chap. 31

11 (1) Les recettes, revenus et bénéfices réalisés par le Centre sont imputés uniquement à la réalisation de son objet.

Revenus du
Centre

(2) Par décret du lieutenant-gouverneur en conseil, les sommes d'argent excédentaires provenant du Centre sont versées au trésorier de l'Ontario et font partie du Fonds du revenu consolidé.

Sommes
d'argent
excédentaires

(3) Le ministre peut, sur les sommes affectées à cette fin par la Législature, consentir au Centre des subventions ou des prêts.

Subventions et
prêts

12 (1) L'exercice du Centre commence le 1^{er} avril et se termine le 31 mars de l'année suivante.

Exercice

(2) Le conseil charge un ou plusieurs vérificateurs titulaires d'un permis délivré en vertu de la *Loi sur les experts-comptables* de vérifier chaque année les comptes et les opérations du Centre.

Vérificateurs
L.R.O. 1980,
chap. 405

(3) La vérification des comptes du Centre est susceptible d'être révisée par le vérificateur provincial.

Révision par
le vérificateur
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13 Au terme de chaque exercice, le Centre présente au ministre un rapport annuel sur les affaires du Centre, y compris les états financiers vérifiés, signés par le président du conseil et par un autre administrateur. Le ministre présente le rapport au lieutenant-gouverneur en conseil et le dépose ensuite devant l'Assemblée. Si celle-ci ne siège pas, il le dépose à la session suivante.

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(2) The board of management is dissolved and the Centre shall stand in the place of the board of management.

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employees

(3) Every person employed under an agreement between the person and the board of management immediately before the coming into force of this Act shall be deemed to be an employee of the Centre on the same terms and conditions as prevailed between the person and the board of management and the Centre shall be deemed to be a party to every such agreement as if the Centre were the board of management.

Rights and
liabilities
continued

(4) The Centre possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the board of management.

Transfer of
title
R.S.O. 1980,
cc. 445, 230,
43, 52

(5) For the purposes of the *Registry Act*, the *Land Titles Act*, the *Bills of Sale Act*, the *Bulk Sales Act* and any other Act affecting title to the property, it is sufficient to cite this Act to show the transmission of title to the Centre and the vesting therein of any real or personal property or any interest therein and the transfer of assets effected by this section shall be deemed to have been made in conformity with each of those Acts.

16. Section 182 of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 26, section 14, is repealed.

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17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

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L.R.O. 1980,
chap. 439
- (2) Le conseil de gestion est dissous et est remplacé par le Centre. Dissolution du
conseil de
gestion
- (3) La personne qui, immédiatement avant l'entrée en vigueur de la présente loi, était employée aux termes d'un accord conclu entre elle et le conseil de gestion, est réputée un employé du Centre aux conditions qui avaient cours en vertu de cet accord. Le Centre est réputé une partie à chacun de ces accords, aux lieu et place du conseil de gestion. Cession de
l'entreprise
- (4) Les biens, droits, privilèges et concessions du conseil de gestion passent au Centre, auquel sont imposés les obligations, contrats, incapacités et dettes, de même que toute responsabilité civile, pénale ou quasi-pénale du conseil de gestion. Les droits et
obligations
demeurent
- (5) Pour l'application de la *Loi sur l'enregistrement des actes*, de la *Loi sur l'enregistrement des droits immobiliers*, de la *Loi sur les actes de vente d'objets*, de la *Loi sur la vente en bloc* et de toute autre loi ayant une incidence sur le titre de propriété, il suffit d'invoquer la présente loi pour établir la transmission du titre en faveur du Centre. L'acquisition au Centre des biens meubles et immeubles et des droits qui s'y rattachent, de même que la cession des biens de l'actif effectuée par le présent article, sont réputées avoir été faites conformément à chacune de ces lois. Cession du
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chap. 445,
230, 43, 52
- 16** L'article 182 de la *Loi sur la municipalité régionale d'Ottawa-Carleton*, qui constitue le chapitre 439 des Lois refondues de l'Ontario de 1980, tel qu'il est modifié par l'article 14 du chapitre 26 des Lois de l'Ontario de 1982, est abrogé.
- 17** La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation. Entrée en
vigueur
- 18** Le titre abrégé de la présente loi est *Loi de 1988 sur le Centre des congrès d'Ottawa*. Titre abrégé

Bill 143

An Act to provide for Certain Rights for Deaf Persons

Mrs. Stoner

1st Reading May 26th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to insure that deaf persons are not discriminated against by reason that they are accompanied by hearing ear dogs that are used by deaf persons as guide dogs.

The Bill extends to deaf persons with guide dogs the rights now enjoyed by blind persons with guide dogs under the *Blind Persons' Rights Act*.

Bill 143

1988

**An Act to provide for
Certain Rights for Deaf Persons**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“deaf person” means a person who because of deafness is dependent on a dog guide;

“dog guide” means a dog trained as a guide for a deaf person and having the qualifications prescribed by the regulations;

“Ministry” means the Ministry of the Attorney General.

(2) This Act applies despite any other Act or any regulation, by-law or rule made thereunder.

Application

(3) This Act binds the Crown.

Act binds
Crown

2.—(1) No person, directly or indirectly, shall,

Dog guides
permitted in
places to
which public
admitted

(a) deny to any person the accommodation, services or facilities available in any place to which the public is customarily admitted; or

(b) discriminate against any person with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted, or the charges for the use thereof,

for the reason that he or she is a deaf person accompanied by a dog guide.

(2) No person, directly or indirectly, shall,

Dog guides
permitted in
self-contained
dwelling unit

(a) deny to any person occupancy of any self-contained dwelling unit; or

- (b) discriminate against any person with respect to any term or condition of occupancy of any self-contained dwelling unit,

for the reason that he or she is a deaf person keeping or customarily accompanied by a dog guide.

Other facilities

(3) Nothing in this section shall be construed to entitle a deaf person to require any service, facility or accommodation in respect of a dog guide other than the right to be accompanied by the dog guide.

Identification cards

3.—(1) The Attorney General or an officer of the Ministry designated by the Attorney General in writing may, upon application therefor, issue to a deaf person an identification card identifying the deaf person and his or her dog guide.

Cards as proof of qualification

(2) An identification card issued under subsection (1) is proof in the absence of evidence to the contrary that the deaf person and his or her dog guide identified therein are qualified for the purposes of this Act.

Surrender of cards

(3) Any person to whom an identification card is issued under subsection (1) shall, upon the request of the Attorney General or an officer of the Ministry designated by the Attorney General in writing, surrender his or her identification card for amendment or cancellation.

Regulations

4. The Lieutenant Governor in Council may make regulations prescribing qualifications for dog guides.

Penalty

5.—(1) Every person who contravenes section 2 is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Idem

(2) Every person who contravenes subsection 3 (3) or who, not being a deaf person, purports to be a deaf person for the purpose of claiming the benefit of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$100.

Commencement

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Deaf Persons' Rights Act, 1988*.

Bill 144

*(Chapter 28
Statutes of Ontario, 1988)*

**An Act for granting to Her Majesty
certain sums of money for the Public Service
for the fiscal year ending the 31st day of March, 1988**

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics

<i>1st Reading</i>	May 26th, 1988
<i>2nd Reading</i>	May 26th, 1988
<i>3rd Reading</i>	May 26th, 1988
<i>Royal Assent</i>	June 1st, 1988

Bill 144

1988

**An Act for granting to Her Majesty
certain sums of money for the Public Service
for the fiscal year ending the 31st day of March, 1988**

MOST GRACIOUS SOVEREIGN:

Whereas it appears by messages from the Honourable Lincoln Alexander, Lieutenant Governor of the Province of Ontario, and from the estimates and supplementary estimates accompanying the same, that the sums mentioned in the Schedule to this Act are required to defray certain charges and expenses of the public service of this Province, not otherwise provided for, for the fiscal year ending the 31st day of March, 1988; may it therefore please Your Majesty that it be enacted and it is hereby enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, as follows:

1.—(1) There may be paid out of the Consolidated Revenue Fund a sum not exceeding in the whole \$20,628,455,700 to be applied towards defraying the several charges and expenses of the public service, not otherwise provided for, from the 1st day of April, 1987, to the 31st day of March, 1988, as set forth in the Schedule to this Act, and, subject to subsection (2), such sum shall be paid and applied only in accordance with the votes and items of the estimates and supplementary estimates upon which the Schedule is based.

\$20,628,455,700
granted for
fiscal year
1987-88

(2) Where, in the fiscal year ending the 31st day of March, 1988, powers and duties were assigned and transferred from one minister of the Crown to another minister of the Crown, the appropriate sums in the votes and items of the estimates and supplementary estimates upon which the Schedule is based that are approved to defray the charges and expenses of the public service in the exercise and performance of such powers and duties, may be assigned and transferred from time to time as required by certificate of the Management Board of Cabinet to the ministry administered by the minister to whom the powers and duties are so assigned and transferred.

Exception

Accounting
for
expenditure

2. The due application of all moneys expended under this Act shall be accounted for to Her Majesty.

Commence-
ment

3. This Act shall be deemed to have come into force on the 31st day of March, 1988.

Short title

4. The short title of this Act is the *Supply Act, 1988*.

SCHEDULE

	ESTIMATES	SUPPLEMENTARY ESTIMATES	TOTAL
	\$	\$	\$
Agriculture and Food	354,166,800	5,064,400	359,231,200
Assembly, Office of the	66,670,900	7,919,300	74,590,200
Attorney General	246,640,600	15,062,700	261,703,300
Cabinet Office	6,057,400	0	6,057,400
Chief Election Officer, Office of the	361,600	0	361,600
Citizenship and Culture	177,487,800	0	177,487,800
Colleges and Universities	1,721,980,800	7,500,000	1,729,480,800
Community and Social Services	2,480,324,100	101,177,200	2,581,501,300
Consumer and Commercial Relations	89,065,900	5,999,300	95,065,200
Correctional Services	261,342,000	0	261,342,000
Disabled Persons, Office for	2,519,000	1,100,000	3,619,000
Education	1,803,332,200	82,800,000	1,886,132,200
Energy	27,092,000	2,446,000	29,538,000
Environment	294,584,600	8,771,900	303,356,500
Financial Institutions	16,643,600	0	16,643,600
Government Services	357,300,100	8,478,000	365,778,100
Health	8,030,936,600	71,212,300	8,102,148,900
Housing	267,957,500	3,337,700	271,295,200
Industry, Trade and Technology	154,358,700	4,567,000	158,925,700
Intergovernmental Affairs	5,071,100	0	5,071,100
Labour	79,069,500	0	79,069,500
Lieutenant Governor, Office of the	366,000	0	366,000
Management Board	196,018,300	0	196,018,300
Municipal Affairs	381,339,000	4,414,300	385,753,300
Native Affairs, Office Responsible for	3,029,800	0	3,029,800
Natural Resources	370,585,900	4,500,000	375,085,900
Northern Development and Mines	171,197,900	0	171,197,900
Ombudsman, Office of the	5,021,700	92,100	5,113,800
Premier, Office of the	1,313,500	0	1,313,500
Provincial Auditor, Office of the	4,895,300	0	4,895,300
Revenue	370,496,100	57,500,000	427,996,100
Senior Citizens Affairs, Office		0	
Responsible for	2,578,000	0	2,578,000
Skills Development	317,011,900	3,057,800	320,069,700
Solicitor General	278,430,600	0	278,430,600
Tourism and Recreation	138,364,900	0	138,364,900
Transportation		64,075,000	64,075,000
Transportation and Communications	1,324,389,600	0	1,324,389,600
Treasury and Economics	147,636,600	0	147,636,600
Women's Issues, Office Responsible for	13,742,800	0	13,742,800
TOTAL	20,169,380,700	459,075,000	20,628,455,700

Bill 145

An Act to prohibit the Sale of Gun Replicas

Mr. Farnan

1st Reading May 30th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to prohibit the sale of replicas of guns that might reasonably be mistaken for real guns in the commission of a crime.

Bill 145

1988

An Act to prohibit the Sale of Gun Replicas

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“gun replica” means a toy gun or other object that is not a fire-arm as defined in the *Criminal Code* (Canada) but that closely resembles or might reasonably be mistaken for such a fire-arm;

R.S.C. 1970,
C-34

“Minister” means the Minister of Consumer and Commercial Relations;

“toy gun” means a gun designed for amusement or diversion rather than practical use.

2.—(1) No person shall sell a gun replica or offer a gun replica for sale.

Prohibition

(2) No person shall sell or offer for sale a toy gun that is not a gun replica unless the Minister has issued a certificate of approval in respect of it.

Idem

3.—(1) A person wishing to sell a toy gun or offer a toy gun for sale may apply to the Minister for a certificate of approval.

Application
for certificate

(2) The application shall be in the form provided by the Minister and shall include the fee set by the Minister and such other information concerning the design of the toy gun, including a model of it, as the Minister may require.

Form of
application

(3) If the Minister believes on reasonable grounds that the toy gun is not a gun replica, the Minister shall issue a certificate in respect of it.

Issue of
certificate

Notice of
refusal

(4) If the Minister believes on reasonable grounds that the toy gun is a gun replica, the Minister shall notify the applicant of his or her refusal and the reasons therefor.

Effect of
certificate

(5) A certificate of approval issued in respect of a toy gun is effective in respect of all toy guns produced by its manufacturer and having the same design.

Offence

4.—(1) Every person is guilty of an offence if the person,

- (a) contravenes subsection 2 (1) or (2);
- (b) provides the Minister with false information or purposely misleads the Minister in an application; or
- (c) falsely claims that a certificate of approval has been issued in respect of a toy gun.

Where not
guilty

(2) A person is not guilty of an offence for contravening subsection 2 (2) if when the person sold a toy gun or offered a toy gun for sale the person reasonably believed that the Minister had issued a certificate of approval.

Penalty

5.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not less than \$100 and not more than \$200 for a first offence and \$500 for each subsequent offence.

Idem

(2) If the person is a corporation, the minimum fine is \$500 and the maximum fines are \$1,000 for a first offence and \$5,000 for a second offence and not as provided in subsection (1).

Commence-
ment

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Gun Replica Sale Prohibition Act, 1988*.

Bill 146

An Act to amend the Landlord and Tenant Act

Mr. Breaugh

1st Reading June 1st, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill amends the *Landlord and Tenant Act* to give tenants of residential units or residential complexes the right, on a first refusal basis, to purchase the unit or complex when the landlord proposes to sell it, demolish it or otherwise change its use. Tenants of residential complexes are required to assign the right to purchase to a non-profit corporation the members of which are tenants of the residential complex, a non-profit housing corporation or a non-profit co-operative housing project.

Bill 146

1988

An Act to amend the Landlord and Tenant Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

RIGHT OF TENANTS TO PURCHASE

129a.—(1) No residential unit or residential complex shall be sold, demolished or its use otherwise changed without the owner of the unit or complex first offering to the tenant or tenants the opportunity of purchasing the unit or complex.

Right of first refusal

(2) A landlord who proposes to sell, demolish or otherwise change the use of a residential unit or a residential complex shall, prior to taking any action to effect such sale, demolition or other change of use, give a notice to the tenants affected advising them of the proposed sale, demolition or other change of use.

Notice of sale, etc.

(3) Subject to the *Rental Housing Protection Act, 1986*, where a notice is received by a tenant or tenants pursuant to subsection (2), the landlord may proceed with the proposed sale, demolition or change to other use if within sixty days the landlord has not received from the tenant or tenants an offer to purchase the unit or complex.

Sixty day period
1986, c. 26

(4) Where the proposed sale, demolition or change to other use is in respect of a residential complex, no offer to purchase given to the landlord shall be effective unless it is authorized by tenants of residential units in the complex.

Offer to purchase requires tenants' authorization

(5) The tenants of a residential complex shall assign their right to purchase the residential complex to,

Assignment of right to purchase

- (a) a non-profit corporation, the members of which are the tenants of the residential complex and of which no members are not tenants of the complex;
- (b) a non-profit housing corporation, including a municipal non-profit housing corporation; or
- (c) a non-profit co-operative housing project.

Referral to
O.M.B. to
determine
price

(6) Where a landlord has received an offer to purchase pursuant to subsection (1) and where the landlord and the tenant or tenants or the representative of the tenants, as the case may be, cannot agree on a price to be paid for the unit or complex, either party may refer the determination of the value of the property to the Ontario Municipal Board.

Idem

(7) The value determined by the Ontario Municipal Board shall be final and the offer to purchase shall be deemed to have been made with that value as the purchase price, except that within seven days of the determination by the Ontario Municipal Board, the purchaser shall have the right, without penalty, of withdrawing the offer.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Landlord and Tenant Amendment Act, 1988*.

Bill 147

An Act respecting Independent Health Facilities

The Hon. E. Caplan
Minister of Health

1st Reading June 2nd, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill would authorize the establishment and operation of independent health facilities. Under the Bill, the Minister of Health will decide upon the need for such a facility and will call for proposals.

A Director will be appointed under the Act. The Director may select a proposal and issue a licence for the facility selected. The Director is also empowered to suspend, revoke or refuse to renew a licence for cause. Any action by the Director will be subject to a hearing by the Health Facilities Appeal Board. The Minister may direct the Director to refuse to issue or renew a licence if the issuance or renewal is not in the public interest. A refusal directed by the Minister will not be subject to the same review as for either refusal to issue a licence or for suspension, revocation or refusal to renew by the Director for cause.

The Bill restricts the right to charge facility fees to licensed independent health facilities. An exception is made for one year for those facilities in operation when the Bill receives First Reading.

The terms "independent health facility" and "facility fee" are defined in the Bill.

Bill 147

1988

An Act respecting Independent Health Facilities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“assessor” means an assessor appointed under section 24;

“Board” means the Health Facilities Appeal Board under the *Ambulance Act*;

R.S.O. 1980,
c. 20

“Director” means the Director appointed under section 4;

“equity share” means a share of a class of shares of a corporation that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“facility fee” means a charge or a fee for or in respect of a service or operating cost that,

(a) supports, assists and is a necessary adjunct, or any of them, to an insured service, and

(b) is not part of the insured service;

“health facility” means a place in which one or more members of the public receive or are intended to receive health services and includes an independent health facility;

“independent health facility” means a health facility in which one or more members of the public receive or are intended to receive services that are insured services and for which facility fees are or are intended to be charged, but does not include a health facility mentioned in section 2;

“inspector” means an inspector appointed under section 24;

R.S.O. 1980,
c. 197

“insured person” and “insured service” have the same meanings as in the *Health Insurance Act*;

“licence” means a licence issued by the Director under this Act;

“Minister” means the Minister of Health;

“Ministry” means the Ministry of Health;

“regulations” means regulations made under this Act;

“security interest” means an agreement between a person and a licensee that secures the licensee’s payment or performance of an obligation by giving the person an interest in the licence.

Controlling
interest

(2) A person shall be deemed to have a controlling interest in a corporation if the person alone or with an associate directly or indirectly beneficially owns or controls,

- (a) issued and outstanding equity shares in the corporation in an amount to permit the person to direct the management and policies of the corporation; or
- (b) 10 per cent or more of the issued and outstanding equity shares in the corporation.

Associates

(3) Persons shall be deemed to be associates of each other if,

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partner of the other person;
- (c) one person is a corporation that is controlled directly or indirectly by the other person;
- (d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other person;
- (e) both persons are members of a voting trust where the trust relates to shares of a corporation;
- (f) one person is the father, mother, brother, sister, child or spouse of the other person or is another rel-

ative who has the same home as the other person;
or

- (g) both persons are associates within the meaning of clauses (a) to (f) of the same person.

(4) For the purposes of this Act, the total number of equity shares of a corporation beneficially owned or controlled shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes the share carries.

Calculating
shares

2. This Act does not apply to the following health facilities, places or services:

Application
of Act

1. A facility or hospital that has been licensed or approved under the *Ambulance Act*, *Homes for Special Care Act*, *Laboratory and Specimen Collection Centre Licensing Act*, *Nursing Homes Act*, *Private Hospitals Act* or *Public Hospitals Act*.
2. An office or place in which one or more persons provide services in the course of the practice of a health profession,
 - i. for or in respect of which the only charges made for insured services are for amounts paid or payable by the Plan as defined in the *Health Insurance Act*, and
 - ii. for or in respect of which no facility fee is requested from or paid by the Province or any person.
3. A service or class of services that is exempt by the regulations.
4. A health facility or class of health facilities that is exempt by the regulations.

R.S.O. 1980,
cc. 20, 202,
409, 320,
389, 410

R.S.O. 1980,
c. 197

3.—(1) No person shall establish or operate an independent health facility except under the authority of a licence issued by the Director.

Licence
required

(2) No person shall charge or accept payment of a facility fee in respect of an insured service provided in an independent health facility unless the facility is licensed under this Act.

Charge for
facility fee

- Idem (3) No person shall charge an insured person a facility fee in respect of an insured service provided in an independent health facility licensed under this Act except as provided in the regulations.
- Director 4. The Minister shall appoint an officer of the Ministry to be the Director of Independent Health Facilities.
- Request for proposals 5.—(1) The Minister may request proposals for the establishment and operation of an independent health facility.
- Matters to be considered (2) In deciding whether or not to request proposals, the Minister shall consider,
- (a) the nature of the service or services provided or to be provided in the independent health facility;
 - (b) the extent to which the service or services is already available in Ontario or any part of Ontario;
 - (c) the need for the service or services in Ontario or any part of Ontario;
 - (d) the future need for the service or services in Ontario or any part of Ontario;
 - (e) the projected cost in public moneys for the operation of the independent health facility; and
 - (f) the availability of public moneys to pay for the operation of the independent health facility.
- Contents of request (3) A request for proposals shall specify,
- (a) the service or services to be provided in the independent health facility;
 - (b) the locality in which the independent health facility is to be located;
 - (c) such other requirements and limitations as the Minister considers relevant; and
 - (d) the final date for submission of proposals.
- Submission of proposals (4) Persons interested in establishing and operating an independent health facility in response to a request for proposals may submit proposals therefor to the Director.
- Contents of proposal (5) A proposal shall set out,

- (a) the business and professional experience of the person submitting the proposal;
- (b) details of the physical nature of the proposed facility;
- (c) the nature of the service or services to be provided in the facility;
- (d) the projected cost for the operation of the facility;
- (e) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the facility;
- (f) details of the professional and other staff proposed for the facility;
- (g) such other information as is relevant to the requirements and limitations specified in the request for proposals.

(6) The Director shall consider the proposals and may request additional information in respect of any proposal.

Consideration
of proposals

6.—(1) Subject to section 8, the Director may issue a licence to a person who has submitted a proposal for the establishment and operation of an independent health facility where the Director is of the opinion,

Issuance of
licence

- (a) that the proposal meets the criteria specified in the request for proposals;
- (b) that the quality and the standards of the independent health facility or of the service or services to be provided in the facility will comply with the regulations or, in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;
- (c) that the person will operate the independent health facility competently and with honesty and integrity; and
- (d) that the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the independent health facility.

Discretion

(2) The issuance of a licence to a person who meets the requirements of subsection (1) is discretionary in the Director and, despite a request for proposals or negotiations in respect of a proposal, the Director,

- (a) is not required to issue a licence to any person; and
- (b) may prefer any proposal over other proposals.

Preference to
non-profit
facilities,
Canadian
licensees

(3) Despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation and without restricting the generality of subsection (2), the Director shall give preference to proposals that indicate,

- (a) that the independent health facility will be operated on a non-profit basis; and
- (b) that the person who has submitted the proposal for the establishment and operation of the facility is,
 - (i) a Canadian citizen ordinarily resident in Canada,
 - (ii) a permanent resident within the meaning of the *Immigration Act, 1976* (Canada) and ordinarily resident in Canada,
 - (iii) a corporate person controlled by one or more persons described in subclause (i) or (ii), or
 - (iv) a corporate person controlled by one or more persons described in subclause (i), (ii) or (iii).

1976-77,
c. 52 (Can.)

Limitations
and
conditions

(4) The Director may issue a licence subject to such limitations and conditions as the Director considers necessary in the circumstances.

Transitional

7.—(1) A person who operates an independent health facility on the 2nd day of June, 1988 may, within one year after the date on which this section comes into force, submit a proposal for a licence to continue to operate the facility, as if the Minister had requested proposals under subsection 5 (1).

Idem

(2) Subsections 5 (4), (5) and (6) and sections 6, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1).

Existing
facilities may
operate and
bill directly

(3) Despite section 3, a person who operates an independent health facility on the 2nd day of June, 1988 may continue

to operate the facility without a licence and to charge and accept payment from any person of a facility fee in respect of an insured service provided in the facility,

- (a) where the person does not submit a proposal under subsection (1), for one year after the date on which this section comes into force;
- (b) where the person submits a proposal and is served with notice that the Director proposes to issue a licence to the person, until the person is issued the licence; or
- (c) where the person submits a proposal and is served with notice that the Director proposes to not issue a licence to the person, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

(4) Any regulation that applies to independent health facilities licensed under this Act or to licensees may be made applicable to independent health facilities operated under subsection (3) or to the persons who operate the facilities, as the case may be.

Regulations
may apply

(5) Where the Director has reasonable and probable ground to believe that an independent health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Director may by a written notice direct the person who operates the facility that subsection (3) does not apply to the facility effective on the date specified in the notice.

Notice that
subs. (3)
does not
apply

(6) An order under subsection (5) is final.

Order is final

8.—(1) Where the Director proposes to issue a licence under subsection 6 (1) or to refuse to issue a licence to any person, the Director shall serve notice of the proposed action, together with written reasons therefor, on every person who submitted a proposal for a licence.

Notice of
proposal to
refuse to
issue licence

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to a hearing by the Board if the person mails or delivers, within fifteen days after the notice under subsection (1) is served on the person,

Notice
requiring
hearing by
Board

notice in writing requiring a hearing to the Director and the Board, and the person may so require such a hearing.

Powers of
Director
where no
hearing

(3) Where no person requires a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of
Board where
hearing

(4) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations.

Idem

(5) For the purposes of subsection (4), the Board may substitute its opinion for that of the Director, but the Board may not direct the Director to do anything that is contrary to the criteria specified in the request for proposals.

Extension of
time for
requiring
hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Minister may
direct refusal
to issue
licence

9.—(1) At any time after the Minister requests proposals for the establishment and operation of an independent health facility and before a licence is issued, the Minister may direct the Director in writing to not issue a licence to any person.

Matters to be
considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

- (a) the nature of the service or services provided or to be provided in the independent health facility;
- (b) the extent to which the service or services is already available in Ontario or any part of Ontario;
- (c) the need for the service or services in Ontario or any part of Ontario;
- (d) the future need for the service or services in Ontario or any part of Ontario;
- (e) the projected cost in public moneys for the operation of the independent health facility; and

- (f) the availability of public moneys to pay for the operation of the independent health facility.

(3) Upon receipt of a direction under subsection (1), the Director shall refuse to issue a licence to any person and shall give written notice to every person who submitted a proposal of the refusal and of the Minister's direction.

Director shall
refuse to
issue licence

(4) Where the Minister issues a direction before the final date for submission of proposals, the Director shall publish notice of the direction in the same manner as the Minister's request for proposals.

Public notice

(5) Section 8 does not apply to a refusal to issue a licence under this section.

No appeal
from refusal
to issue
licence

10. A licence is not transferable.

Transfer of
licence

11. Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal, unless it is revoked or is surrendered to the Director before that date.

Expiry of
licence

12. A corporation that is a private company as defined in the *Securities Act* shall not permit an issue or transfer of equity shares of its capital stock that has the effect of changing the ownership or controlling interest in the corporation while the corporation is a licensee.

Share
transfer
R.S.O. 1980,
c. 466

13.—(1) A licensee that is a corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Duty of
corporation
to notify
Director

(2) Where a corporation has an interest in a licence, and there is reasonable ground for belief that an issue or transfer of equity shares of its capital stock or the occurrence of a circumstance by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the corporation shall so notify the Director forthwith.

Idem

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of equity shares of capital stock in the corporation, which statement shall contain the information that, in the opinion of the Director, is reasonably necessary to enable the Director to determine,

Statement
required

- (a) what persons, if any, have a controlling interest in the corporation; and
- (b) what persons, if any, own or beneficially own directly or indirectly the corporate persons or a controlling interest in the corporate persons mentioned in clause (a).

Idem

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the opinion of the Director, it is reasonably necessary for the purposes set out in subsection (3).

Exercise of security interest

14. A person who has a security interest in a licence shall not exercise that interest if exercise of the interest would change the ownership or controlling interest in the licence.

Contracts

15. A licensee shall not enter into a contract whose effect is to change the ownership or controlling interest in a licence.

Order by Director to take control

16.—(1) Where the Director is of the opinion that an independent health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence or after the death of the licensee, the Director by a written order may take control of and operate the facility for a period not exceeding one year.

Authority of Director

(2) Where the Director takes control of and operates an independent health facility under subsection (1), the Director has all the powers of the licensee and the Director may appoint one or more persons to operate the facility and each person so appointed is a representative of the Director.

Payment for services and compensation for property

(3) Where the Director takes control of an independent health facility, the licensee, former licensee or estate of the licensee, as the case may be,

- (a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Director; and
- (b) is entitled to reasonable compensation from the Crown for the use of property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Director.

Order effective immediately

(4) An order under subsection (1) takes effect immediately and is final.

17.—(1) The Director may revoke, suspend or refuse to renew a licence where,

Revocation
and refusal
to renew
licence

- (a) the licensee or any member of the licensee's staff or an employee of the licensee is in contravention of this Act or the regulations or any other Act of the Legislature or of the Parliament of Canada or regulation that applies to the independent health facility or to the licensee, any member of the licensee's staff or an employee of the licensee, as the case may be;
- (b) there is a breach of a limitation or condition of the licence;
- (c) any person has made a false statement in the proposal submitted to the Director in respect of the independent health facility;
- (d) any person has made a false statement in the application for renewal of the licence;
- (e) any person has made a false statement in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the independent health facility;
- (f) there is reasonable ground for belief that the independent health facility is not being or will not be operated in accordance with the law and with honesty and integrity;
- (g) there is reasonable ground for belief that the independent health facility is not being or will not be operated in a responsible manner in accordance with this Act or the regulations or any other Act or regulation that applies to the facility;
- (h) there is reasonable ground for belief that the independent health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;
- (i) the licensee has ceased operating the independent health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open;

- (j) the licensee is a corporation described in section 12 that has permitted an issue or transfer contrary to that section;
- (k) a corporation has failed to make a report or statement to the Director contrary to section 13;
- (l) a person who has a security interest in a licence has exercised that interest contrary to section 14; or
- (m) the licensee has entered into a contract described in section 15 contrary to that section.

Emergency
suspension

(2) If the Director is of the opinion upon reasonable grounds that the independent health facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the facility.

Order
effective
immediately

(3) Despite subsections (4) and (5), an order under subsection (2) takes effect immediately.

Notice
requiring
hearing by
Board

(4) The Director shall deliver with the order under subsection (2) notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of
Board where
hearing

(5) Subsections 19 (4) and (6) apply with necessary modifications to a suspension under subsection (2).

Minister may
direct refusal
to renew
licence

18.—(1) The Minister may direct the Director in writing to not renew the licence.

Matters to be
considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

- (a) the nature of the service or services provided or to be provided in the independent health facility;
- (b) the extent to which the service or services is already available in Ontario or any part of Ontario;
- (c) the need for the service or services in Ontario or any part of Ontario;
- (d) the future need for the service or services in Ontario or any part of Ontario;

- (e) the projected cost in public moneys for the operation of the independent health facility; and
- (f) the availability of public moneys to pay for the operation of the independent health facility.

(3) Upon receipt of a direction under subsection (1), the Director must give written notice to the licensee at least six months before the expiry of the licence that the licence will not be renewed upon expiry pursuant to the Minister's direction.

Notice to licensee

(4) Upon the expiry of the licence, the Director shall refuse to renew the licence.

Director shall refuse to renew licence

(5) Section 19 does not apply to a refusal to renew a licence under this section.

No appeal from refusal to renew licence

19.—(1) Where the Director proposes to revoke, suspend or refuse to renew a licence under subsection 17 (1), the Director shall serve notice of the proposed action, together with written reasons therefor, on the licensee.

Notice of proposal to revoke or refuse to renew licence

(2) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Notice requiring hearing by Board

(3) Where a licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Director where no hearing

(4) Where a licensee requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Powers of Board where hearing

(5) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the retention of the licence and that it would be just and reasonable to give the licensee that opportunity.

Opportunity to comply

Extension of
time for
requiring
hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Continuation
of licence
pending
renewal

(7) Where, before the expiry of the licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Parties to
hearing
before the
Board

20.—(1) The Director, the person who has required the hearing and any other person the Board may specify are parties to proceedings before the Board under this Act.

Submissions

(2) The Board may permit any person who is not a party before it to make written or oral submissions to the Board and, where it does so, those submissions may be made either personally or through an agent.

Examination
of
documentary
evidence

(3) A party to proceedings and a person who is permitted to make submissions to the Board shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members
holding
hearing not
to have
taken part in
investigation,
etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Recording of evidence

(6) The findings of fact of the Board following upon a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of fact

R.S.O. 1980, c. 484

(7) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was present throughout the hearing, heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2) and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Only members at hearing to participate in decision

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to that person by the Board within a reasonable time after the matter in issue has been finally determined.

Release of documentary evidence

21.—(1) Any party to proceedings before the Board may appeal from its decision or order to the Divisional Court on a question of law alone.

Appeal from decision of Board

(2) Where any party appeals under subsection (1), the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Record to be filed in court

(3) On an appeal under subsection (1), the Divisional Court may affirm or may rescind the decision of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Powers of court on appeal

(4) The decision of the Divisional Court under this section is final.

Final decision

22. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that the person did

Service of notice

not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

Payment by
Minister

23. The Minister may pay all or part of the cost of services provided in and the operating costs of an independent health facility according to whatever method of payment the Minister may decide upon.

Inspectors
and assessors

24.—(1) The Minister may appoint in writing one or more employees of the Ministry or other persons as inspectors or as assessors, or both.

Limitation

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector or an assessor in such manner as the Minister considers necessary or advisable.

Assessment

25.—(1) It is the function of an assessor to carry out assessments of the quality and the standards of services provided in independent health facilities.

Co-operation
by licensees

(2) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of an independent health facility operated by a licensee.

Idem

(3) The co-operation required of a licensee includes,

- (a) permitting the assessor to enter and inspect the premises of the independent health facility;
- (b) permitting the assessor to inspect records, including patient records;
- (c) providing to the assessor information requested by the assessor in respect of records, including patient records, or the care of patients in the independent health facility;
- (d) providing the information mentioned in clause (c) in the form requested by the assessor;
- (e) permitting the assessor to make or take and remove samples of any substance on the premises of the independent health facility;
- (f) providing samples mentioned in clause (e) as requested by the assessor; and

- (g) conferring with the assessor when requested to do so by the assessor.

26.—(1) An inspector may at any reasonable time, without a warrant, enter any premises of a health facility to make an inspection to ensure, Inspection of health facilities

- (a) in respect of a health facility operated by persons not licensed under this Act, that there is no contravention of subsection 3 (1) or (2);
- (b) in respect of a health facility operated under subsection 6 (3) by persons not licensed under this Act, that the quality and standards of the service or services provided in the facility comply with the regulations or, in the absence of regulations, conform to the generally accepted quality and standards for the facility and the service or services provided in such facility; and
- (c) in respect of a health facility operated by persons licensed under this Act, that this Act and the regulations and the limitations and conditions of the licence, if any, are being complied with.

(2) Where an inspector has reasonable ground to believe that there is in any premises, other than a health facility, any thing that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act or in relation to the establishment or operation of an independent health facility licensed under this Act, the inspector may apply under section 142 of the *Provincial Offences Act* for a warrant to enter and search the premises. Search of premises other than health facilities

R.S.O. 1980,
c. 400

(3) Subsection (1) is not authority to enter a private residence without the consent of an occupier, except under the authority of a warrant under section 27. Private residence

(4) Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt from the application of this Act. Exempt health facilities

(5) Upon an inspection under this section, the inspector, Powers on inspection

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient

and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which such records are kept, but if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

- (c) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any material referred to in clause (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed;
- (d) has the right, at any reasonable time, to make and take or require to be made or taken samples of any substance on the premises;
- (e) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any sample referred to in clause (d) that relates to the purpose of the inspection for the purpose of making an analysis thereof; and
- (f) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination.

Co-operation
by licensees

(6) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an inspector carrying out an inspection of an independent health facility operated by a licensee.

Warrant to
enter and
inspect

27.—(1) A provincial judge or justice of the peace may issue a warrant in the form prescribed by the regulations where the judge or justice is satisfied upon application by an inspector, on information upon oath, that there is reasonable ground for believing that it is necessary to do anything set out in clause 26 (5) (a), (b), (c), (d) or (e) in respect of a health facility and,

- (a) no occupier is present to grant access to a premises that is locked or otherwise inaccessible;

- (b) no occupier is present to grant access to a private residence; or
- (c) an occupier of the premises,
 - (i) has denied an inspector entry to the premises,
 - (ii) has instructed an inspector to leave the premises,
 - (iii) has obstructed an inspector,
 - (iv) has refused to produce to an inspector any material referred to in clause 26 (5) (b), or
 - (v) has refused to make or take a sample as required in clause 26 (5) (d).

(2) A warrant issued under subsection (1) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officer or officers as the inspector calls upon for assistance, to do anything set out in clause 26 (5) (a), (b), (c), (d) or (e) and specified in the warrant.

Authority
given by
warrant

(3) A warrant issued under subsection (1) shall be executed at reasonable times.

Execution of
warrant

(4) A warrant issued under subsection (1) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Expiry of
warrant

(5) A provincial judge or justice of the peace may receive and consider an application for a warrant under subsection (1) without notice to and in the absence of the owner or occupier of the premises.

Application
without
notice

28.—(1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the material of which they are copies.

Admissibility
of copies

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Analysis
report as
evidence

Obstruction
of inspector

29. No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject-matter of an inspection.

Matters
confidential

30. Every person employed in the administration of this Act, including any person making an assessment or inspection under this Act, shall preserve secrecy in respect of all matters that come to the person's knowledge in the course of the person's duties or employment or of an assessment or inspection, and shall not communicate any such matters to any person except,

- (a) in connection with the administration or enforcement of any Act or any proceedings under any Act;
- (b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;
- (c) to the person's counsel; or
- (d) with the consent of the person to whom the information relates.

Offences

31.—(1) Every person who contravenes section 3, 29 or 30 is guilty of an offence.

Corporate
offences

(2) Every person who contravenes section 12, 13, 14 or 15 is guilty of an offence.

Breach of
regulations

(3) Every person who contravenes the regulations is guilty of an offence.

Penalty

(4) Every person who is guilty of an offence under this section is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000 on a first conviction and not more than \$10,000 on each subsequent conviction.

Corporation

(5) Where a corporation is convicted of an offence under this section, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is \$25,000 on a first conviction and \$50,000 on each subsequent conviction, and not as provided in subsection (4).

Restraining
order

32.—(1) In addition to any other remedy and to any penalty imposed by law, a contravention of section 3 may be restrained by action at the instance of the Attorney General.

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the action that constitutes the offence.

Restraining
order upon
conviction

33.—(1) The Lieutenant Governor in Council may make regulations,

Regulations

1. exempting any health facility or class of health facility from the application of this Act or the regulations or any provision thereof;
2. governing the process for submitting proposals;
3. governing applications for renewals of licences;
4. prescribing forms and providing for their use;
5. prescribing fees for licences and for renewals of licences;
6. classifying health facilities or independent health facilities;
7. respecting and governing the care, treatment and services provided in independent health facilities or any class thereof;
8. prescribing and governing the quality and the standards of services provided in independent health facilities or any class thereof;
9. prescribing and governing the quality and the standards of independent health facilities or any class thereof;
10. prescribing and governing the requirements for staff and employees of independent health facilities or any class thereof;
11. prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operations of independent health facilities or any class thereof;
12. prescribing the books, records and accounts that shall be kept by licensees including their form and

content and the place or places where they shall be kept;

13. requiring the accounts of independent health facilities to be audited and requiring the licensees to furnish such information or accounts as may be required by the Director;
14. prescribing and governing the records that shall be kept by licensees with respect to the care and treatment of patients of the independent health facility;
15. governing the reports and returns that shall be made to the Director by licensees;
16. requiring and governing the system or systems that shall be kept by licensees to monitor the results of the services provided in independent health facilities or any class thereof;
17. governing access to patient or drug records and specifying persons who may have access to such records;
18. prescribing other duties of assessors;
19. prescribing other duties of inspectors;
20. classifying services;
21. exempting any service or class of service from the application of this Act or the regulations or any provision thereof;
22. prescribing services, classes of services and operating costs that are not part of the insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;
23. prescribing services, classes of services and operating costs that are part of the insured service;
24. prescribing any services, any classes of services and any operating costs that are not part of the insured service and that support, assist and are a necessary adjunct, or any of them, to an insured service;
25. prescribing the maximum amount a person may charge for services or operating costs prescribed under paragraph 24;

26. prescribing the services, classes of services and operating costs for which a person may charge a facility fee to insured persons;
27. prescribing the maximum amount a person may charge to insured persons as facility fees;
28. governing and restricting the disposition and transfer of the assets of independent health facilities;
29. making any regulation made under paragraphs 1 to 28 applicable to independent health facilities operated under subsection 7 (3) or to the persons who operate the facilities.

(2) A regulation may be general or particular in its application. Scope of regulations

COMPLEMENTARY AMENDMENTS

34.—(1) Clause 1 (h) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (h) “insured services” means,
- (i) such services of hospitals and health facilities as are prescribed by the regulations,
 - (ii) such services rendered by physicians as are prescribed by the regulations, and
 - (iii) such other health care services as are rendered by such practitioners and under such conditions and limitations as are prescribed by the regulations,

but does not include the services that a person is entitled to under the *Workers' Compensation Act*, the *Homes for Special Care Act* or under any Act of the Parliament of Canada.

R.S.O. 1980,
cc. 539, 202

(2) Clause 51 (1) (j) of the said Act is repealed and the following substituted therefor:

- (j) prescribing the services rendered in or by hospitals and health facilities and by physicians and practitioners that are insured services, but no regulation may be made under this clause that disqualifies the

Plan for contribution by the Government of Canada.

(3) Subsection 51 (1) of the said Act is amended by adding thereto the following clauses:

- (ja) prescribing any constituent elements that are part of an insured service rendered by physicians and practitioners;
- (jb) prescribing any constituent elements that shall be deemed not to be part of an insured service rendered by physicians and practitioners.

Commence-
ment

35. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

36. The short title of this Act is the *Independent Health Facilities Act, 1988*.

Bill 148

An Act to amend certain Acts respecting the Environment

The Hon. J. Bradley
Minister of the Environment

1st Reading June 2nd, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill has two major purposes: to add to the enforcement provisions of the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Pesticides Act* greater precision and greater protection of the rights of individuals in light of developing jurisprudence under section 8 of the Canadian Charter of Rights and Freedoms; and to add greater procedural fairness to the hearing provisions of the three statutes.

The Bill is divided into three parts, one for each statute.

PART I—*Environmental Protection Act*

SECTIONS 5, 7, 8, 13. The Director's powers with respect to certificates of approval and program approvals are spelled out in full. The Director's powers with respect to preventive orders are expanded.

SECTION 11 (2). The provision in subsection 14 (3) of the Act for the future repeal of the notification requirements in subsections 14 (1) and 14 (2) is itself repealed.

SECTION 14. Court orders are made binding on successors and assignees.

SECTION 15. The definition of "motor" for Part III of the Act is limited to a motor used in a vehicle.

SECTION 16. The Bill requires that motor vehicles advertised for sale must comply with the regulations concerning emissions.

SECTIONS 19, 20, 21, 22, 23, 41. The Bill provides that hearings for certificates of approval for waste disposal sites and waste management systems be held by the Environmental Assessment Board. The Environmental Assessment Board is empowered to make decisions, which must be implemented by the Director, and to award costs. Decisions of the Environmental Assessment Board may be appealed to Divisional Court and Cabinet.

SECTIONS 27, 48. The heading to Part VIII of the Act is amended to better reflect its content.

SECTIONS 1 (5), 32, 42, 43. The Bill creates a comprehensive code of the inspection, search and seizure powers for the enforcement of the Act.

SECTION 45. The regulation-making powers are expanded.

Subsection 136 (7) of the Act incorrectly refers to sections 89, 90 and 80. The Bill corrects the references to sections 88, 89 and 79.

SECTION 46. Special rules are established to facilitate the service of an offence notice or summons on owners of and on employers of drivers of vehicles for offences under the Act.

SECTION 47. Crown counsel may elect that a trial for an offence under the Act be heard by a provincial judge instead of a justice of the peace.

MISCELLANEOUS. The term "discharge" is redefined and the Act is amended throughout by deleting the terms included in the definition.

"Adverse effects" is redefined in the singular and is used to replace descriptive language throughout the Act.

The term "person" is redefined to omit the reference to the Crown since it is expressly bound by section 19 of the Act.

PART II—*Ontario Water Resources Act*

SECTIONS 51, 52. The Minister may designate provincial officers to enforce the Act.

SECTIONS 53, 66, 67, 74. Hearings before the Environmental Assessment Board are dealt with as in Part I.

SECTION 55. Court orders are made binding on successors and assignees.

A register of orders, approvals, requirements, directions and reports, similar to that in the existing *Environmental Protection Act*, is created.

SECTIONS 55, 56, 57. A comprehensive code of inspection, search and seizure powers, parallel to that in Part I, is added.

SECTION 60 (3). The exemption in subsection 16 (4) of the Act from the notification requirements and the provision in subsection 16 (6) for the future repeal of the notification requirements are repealed.

SECTIONS 60 (3), 64 (3), 64 (5), 65 (3), 70, 71. General offence provisions that are encompassed in section 66 of the Act are deleted.

SECTIONS 62, 64, 65, 80 (2). The amendments to the Directors' powers with respect to certificates of approval and preventive orders are parallel to those in Part I.

SECTIONS 64 (4), 69. The time in which certain returns must be filed is left to the discretion of the Directors.

SECTION 68. The language of section 30 of the Act is simplified.

SECTION 75. The regulation-making powers are expanded.

SECTION 76. The provision for multiple informations is repealed since it is provided for in the *Provincial Offences Act*.

SECTION 77. Special rules for the service of an offence notice or summons on owners of and employers of drivers of vehicles, as in Part I, are added to the Act.

SECTION 78. Ministerial directions under section 51 of the Act are required to be made by order.

SECTION 81. A provision allowing Crown counsel to elect trial by a provincial judge, as in Part I, as well as general rules for service, are added to the Act.

MISCELLANEOUS. As in Part I, "discharge" is redefined. "Person" is defined to include a municipality, parallel to the definitions in the *Environmental Protection Act* and the *Pesticides Act*.

PART III—*Pesticides Act*

SECTIONS 87, 90, 91. There is a code of inspection, search and seizure powers which parallels that in Part I.

SECTIONS 89, 96. The expiry date of licences will be prescribed by regulation.

SECTION 95. As in Parts I and II, court orders are made binding on successors and assignees.

SECTION 97. The Crown is entitled to elect trial by provincial judge, as in Parts I and II.

SECTION 98. The provision for multiple informations is repealed.

SECTION 99. Service on owners of and employers of drivers of vehicles is dealt with as in Parts I and II.

MISCELLANEOUS. The definition of "discharge" is amended, as in Parts I and II.

Bill 148

1988

**An Act to amend
certain Acts respecting the Environment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

Environmental Protection Act

1.—(1) Clause 1 (1) (a) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1986, chapter 68, section 1, is amended by striking out “effects” in the first line and inserting in lieu thereof “effect”.

(2) Clause 1 (1) (c) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 1, is repealed and the following substituted therefor:

- (c) “contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.

(3) Clause 1 (1) (ca) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 1, is repealed and the following substituted therefor:

- (ca) “discharge”, when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak.

(4) Clause 1 (1) (l) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 1, is repealed and the following substituted therefor:

- (l) “person” includes a municipality.

(5) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 1 and 1986, chapter 68, section 1, is further amended by adding thereto the following clauses:

(da) "inspection" includes an audit, examination, survey, test and inquiry;

.

(ma) "place" includes a building, structure, machine, vehicle or vessel.

(6) Clause 1 (1) (p) of the said Act is amended by striking out "adds to, emits or" in the first and second lines.

2. Subsection 5 (1) of the said Act is amended by striking out "deposit in, add to, emit or" in the first line and by striking out "addition to, emission or" in the fourth line.

3. Section 6 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 3, is further amended by striking out "added to, emitted or" in the second and third lines.

4. Section 7 of the said Act is amended by striking out "adding to, emitting or" in the third line.

5.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

Appeal of
Director

(1) No person shall, except under and in accordance with a certificate of approval issued by the Director,

(a) construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water; or

(b) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural environment other than water or the rate or manner of discharge of a contaminant into any part of the natural environment other than water may be altered.

(2) Subsection 8 (2) of the said Act is amended by striking out "emission or" in the seventh line.

(3) Clause 8 (3) (c) of the said Act is repealed and the following substituted therefor:

- (c) any equipment, apparatus, mechanism or thing in or used in connection with a building or structure designed for the housing of not more than three families where the only contaminant produced by such equipment, apparatus, mechanism or thing is sound or vibration.

(4) Subsection 8 (4) of the said Act is repealed and the following substituted therefor:

(4) The Director may refuse to issue a certificate of approval or may issue a certificate of approval on such terms and conditions as the Director considers necessary, Powers of Director

- (a) to ensure that any construction, alteration, extension, replacement, use or operation of a plant, structure, equipment, apparatus, mechanism or thing referred to in clause (1) (a) or that any alteration of a process or rate of production referred to in clause (1) (b) will result in compliance with this Act and the regulations and any order or approval hereunder; or
- (b) on probable grounds, to prevent or alleviate an adverse effect.

(5) The Director may,

Idem

- (a) alter any terms and conditions in a certificate of approval or impose new terms and conditions; or
- (b) revoke or suspend a certificate of approval,

as the Director considers necessary for the reasons set out in clause (4) (a) or (b).

(6) A person to whom the Director has issued a certificate of approval under subsection (1) may make any changes in respect of which it is impractical to first obtain an amendment to the certificate if, Exception

- (a) the changes are not capable of increasing the potential for discharge of a contaminant into the natural environment; and
- (b) the Director is notified in writing forthwith of the changes.

No use or
operation
without
certificate of
approval

(7) No person shall use or operate a plant, structure, equipment, apparatus, mechanism or thing for which a certificate of approval is required under clause (1) (a) unless the required certificate of approval has been issued and complied with.

6. Subsection 9 (1) of the said Act is amended by striking out “addition to, emission or” in the third line.

7. Section 10 of the said Act is amended by adding thereto the following subsections:

Amendment
or revocation

(2) The Director may, by order, amend or revoke a program approval that was issued in error or that no longer adequately provides for the protection and conservation of the natural environment.

Amendment
or revocation
on consent

(3) The Director may, by order, amend or revoke a program approval with the consent of the person to whom the program approval is directed.

No hearing
for
amendment
or revocation
on consent

(4) Subsection 122 (1) does not entitle any person to a hearing in respect of an amendment or revocation of a program approval in accordance with a consent mentioned in subsection (3).

8. Section 11 of the said Act is amended by inserting after “approval” in the first line “or order”.

9. Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

Ministry to
be notified
when
contami-
nation
exceeds
permitted
level

(1) Every person,

(a) who discharges into the natural environment; or

(b) who is the person responsible for a source of contaminant that discharges into the natural environment,

any contaminant in an amount, concentration or level in excess of that prescribed by the regulations shall forthwith notify the Ministry of the discharge.

10. Section 13 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 4, is repealed and the following substituted therefor:

Prohibition

13.—(1) Notwithstanding any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natu-

ral environment that causes or is likely to cause an adverse effect.

(2) Subsection (1) does not apply, in respect of an adverse effect referred to in subclause 1 (1) (a) (i), to animal wastes disposed of in accordance with normal farming practices. Exception

11.—(1) Subsection 14 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 5, is repealed and the following substituted therefor:

(1) Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment out of the normal course of events that causes or is likely to cause an adverse effect shall forthwith notify the Ministry. When
Ministry to
be notified

(2) Subsection 14 (3) of the said Act is repealed.

12. Section 16 of the said Act is amended by striking out “deposit, addition, emission or” in the first and second lines.

13. Subsection 17 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 52, section 6, is amended by adding thereto the following paragraphs:

5. To monitor and record the discharge into the natural environment of a contaminant specified in the order and to report thereon to the Director.
6. To study and to report to the Director upon,
 - i. measures to control the discharge into the natural environment of a contaminant specified in the order,
 - ii. the effects of the discharge into the natural environment of a contaminant specified in the order,
 - iii. the natural environment into which a contaminant specified in the order is likely to be discharged.

14.—(1) Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

(1) An order or approval of a court, the Minister or the Director under this Act is binding upon the successor or assignee of the person to whom it is directed. Order or
approval
binds
successor or
assignee

(2) Subsection 18 (3) of the said Act is amended by inserting after "revoked" in the first line "or set aside".

15. Clause 20 (a) of the said Act is amended by adding at the end thereof "used in a vehicle".

16.—(1) Subsection 21 (1) of the said Act is amended by striking out "offer or expose" in the first line and inserting in lieu thereof "or offer, expose or advertise".

(2) Subsection 21 (2) of the said Act is amended by striking out "emission" in the third line and inserting in lieu thereof "discharge" and by striking out "offer or expose" in the fourth line and inserting in lieu thereof "or offer, expose or advertise".

(3) Subsection 21 (3) of the said Act is amended by striking out "emission" in the third line and inserting in lieu thereof "discharge".

17. Subsection 22 (2) of the said Act is amended by striking out "emission" in the third line and inserting in lieu thereof "discharge".

18. Subsection 23 (2) of the said Act is repealed and the following substituted therefor:

Discharge of
waste
prohibited

(2) No person shall discharge or cause or permit the discharge of any waste on ice over any water except in accordance with the regulations.

19.—(1) Subsection 30 (1) of the said Act is amended by striking out "hold a public hearing" in the last line and inserting in lieu thereof "require the Environmental Assessment Board, by a notice in writing, to hold a hearing".

(2) Subsection 30 (2) of the said Act is amended by striking out "Director" in the seventh line and inserting in lieu thereof "Environmental Assessment Board".

20. Section 31 of the said Act is amended by striking out "holding a public hearing" in the last line and inserting in lieu thereof "requiring the Environmental Assessment Board to hold a hearing".

21.—(1) Subsection 32 (1) of the said Act is amended by striking out "hold a public hearing" in the last line and inserting in lieu thereof "require the Environmental Assessment Board, by a notice in writing, to hold a hearing".

(2) Subsection 32 (2) of the said Act is amended by striking out “Director” in the last line and inserting in lieu thereof “Environmental Assessment Board”.

22. Section 33 of the said Act is repealed and the following substituted therefor:

33.—(1) Upon receipt of a notice from the Director under section 30 or 32, the Environmental Assessment Board shall hold a hearing with respect to the subject-matter of the notice.

Hearing
before
Environ-
mental
Assessment
Board

(2) The applicant, the Director and any other persons specified by the Environmental Assessment Board shall be parties to the hearing.

Parties

(3) Subsections 18 (16), (17) and (18) and sections 20 and 23 of the *Environmental Assessment Act* do not apply to a decision of the Environmental Assessment Board made in a hearing under this section.

Application
of
R.S.O. 1980,
c. 140

(4) The Environmental Assessment Board shall serve notice of its decision, together with reasons therefor, on the parties to the hearing, and the Director shall implement the decision.

Decision

(5) The Environmental Assessment Board may award the costs of a hearing before it.

Costs

(6) The Environmental Assessment Board may order by whom and to whom the costs are to be paid.

Payment

(7) The Environmental Assessment Board may fix the amount of the costs awarded or direct that the amount be assessed and specify the scale according to which they are to be assessed and by whom they are to be assessed.

Assessment

(8) The amount of the costs awarded to a person who intervened in a hearing under this section shall be fixed or assessed without any deduction for an amount paid to the person by the Crown in respect of the hearing that is repayable to the Crown.

Government
funding not
to reduce
costs award

33a.—(1) A party to a proceeding under this Act before the Environmental Assessment Board may appeal from its decision,

Appeal from
decision of
Environ-
mental
Assessment
Board

(a) on a question of law, to the Divisional Court;

- (b) on a question other than a question of law, to the Lieutenant Governor in Council.

Time to
appeal to
Cabinet

(2) An appeal under clause (1) (b) shall be made in writing within thirty days after the appealing party receives the decision of the Environmental Assessment Board.

Powers of
Cabinet on
appeal

(3) In an appeal under clause (1) (b), the Lieutenant Governor in Council shall confirm, alter or revoke the decision of the Environmental Assessment Board, substitute for the decision of the Board such decision as it considers appropriate or, by notice in writing to the Environmental Assessment Board, require it to hold a new hearing with respect to all or any part of the subject-matter of the decision.

23. Subsection 35 (4) of the said Act is repealed.

24. Clause 47a (2) (b) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is repealed and the following substituted therefor:

- (b) that the continued operation of the vehicle will result or is likely to result in an adverse effect.

25.—(1) Subsection 47b (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is amended by striking out “any of the effects mentioned in subsection 47a (2)” in the last line and inserting in lieu thereof “an adverse effect”.

(2) Clause 47b (9) (b) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is amended by striking out “any of the effects mentioned in subsection 47a (2)” in the last line and inserting in lieu thereof “an adverse effect”.

26. Subsection 68 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 11, is further amended by striking out “deposit, addition, emission or” in the third last and second last lines.

27. The heading to Part VIII of the said Act is repealed and the following substituted therefor:

LITTER, PACKAGING AND CONTAINERS

28. Clause 79 (1) (b) of the said Act is repealed.

29.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant that causes or is likely to cause an adverse effect shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto,

Notice to
Ministry and
others

- (a) the Ministry;
- (b) the municipality or, if the spill occurred within the boundaries of a regional municipality, the regional municipality within the boundaries of which the spill occurred;
- (c) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and
- (d) where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant.

(2) Subsection 80 (2) of the said Act is amended by striking out “adverse effects” in the fifth and sixth lines and inserting in lieu thereof “an adverse effect”.

30.—(1) Subsection 81 (1) of the said Act is amended by striking out “adverse effects” in the third line and inserting in lieu thereof “an adverse effect” and by striking out “effects” in the fifth line and inserting in lieu thereof “effect”.

(2) Subsection 81 (2) of the said Act is amended by striking out “adverse effects” in the last line and inserting in lieu thereof “an adverse effect”.

31.—(1) Subsection 82 (1) of the said Act is amended by striking out “adverse effects” in the second and third lines and inserting in lieu thereof “an adverse effect”.

(2) Subsection 82 (3) of the said Act is amended by striking out “effects” in the fifth line and inserting in lieu thereof “effect”.

32. Section 83 of the said Act is repealed and the following substituted therefor:

Entry and
removal

83.—(1) For the purpose of carrying out any duty imposed or order or direction made or given under this Part, any person subject to the duty or to whom the order or direction is made or given and that person's employees and agents may,

- (a) enter any place;
- (b) construct structures and use machinery, structures, materials and equipment therein or thereon; and
- (c) remove therefrom the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant.

Enforcement
of right of
entry, etc.

(2) The rights set out in subsection (1) may be enforced by application without notice to a judge of the Supreme Court or a local judge of the High Court by a person, employee or agent referred to in subsection (1).

Order by
judge

(3) Where the judge or local judge is satisfied that there is reasonable ground for believing that it is necessary to do anything mentioned in subsection (1), the judge or local judge may issue an order authorizing the person and the person's employees and agents or any one or more of them to do anything mentioned in subsection (1) and specified in the order.

When to be
executed

(4) An order under subsection (3) shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

33. Subsection 85 (1) of the said Act is amended by striking out "are or are likely to be adverse effects" in the second and third lines and inserting in lieu thereof "is or is likely to be an adverse effect".

34.—(1) Subclause 87 (2) (a) (i) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

(2) Subclause 87 (4) (b) (i) of the said Act is amended by striking out "effects" in the second line and inserting in lieu thereof "effect".

35. Subsection 88 (1) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

36. Subsection 89 (10) of the said Act is amended by striking out “discharged” in the seventh line and inserting in lieu thereof “released”.

37. Subclause 91 (1) (a) (i) of the said Act is amended by striking out “adverse effects” in the second line and inserting in lieu thereof “an adverse effect”.

38. Subsection 98 (5) of the said Act is amended by striking out “discharged” in the seventh line and inserting in lieu thereof “released”.

39.—(1) Clause 113 (1) (a) of the said Act is amended by striking out “addition, emission or” in the first and second lines.

(2) Clause 113 (1) (b) of the said Act is amended by striking out “addition, emission or” in the first line.

(3) Clause 113 (1) (c) of the said Act is amended by striking out “added, emitted or” in the third line.

(4) Clause 113 (1) (d) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 15, is further amended by striking out “addition, emission or” in the third line.

40. Section 117 of the said Act is amended by striking out “adding to, emitting or” in the fourth line.

41.—(1) Subsection 121 (2) of the said Act is amended by striking out “or” at the end of clause (b), by inserting “or” at the end of clause (c) and by adding thereto the following clause:

- (d) imposes new terms and conditions to a certificate of approval,

.

(2) Section 121 of the said Act is amended by adding thereto the following subsection:

(3) Subsections (1) and (2) do not apply with respect to a decision of the Environmental Assessment Board that is implemented by the Director in accordance with subsection 33 (4). Exception

42. Section 126 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 9, is repealed and the following substituted therefor:

Inspection by
provincial
officer

126.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

- (a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, eliminated or ameliorated and the natural environment restored;
- (b) entering any place in which the provincial officer reasonably believes can be found waste to which Part V applies;
- (c) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;
- (d) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations, or
 - (ii) the discharge of a contaminant into the natural environment;
- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,

- (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a certificate of approval, provisional certificate of approval or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;
- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
 - (h) entering any place where a motor, motor vehicle or beverage container regulated by or under this Act is stocked, displayed, sold or offered for sale to carry out his or her duties under Part III or VIII, as the case may be;
 - (i) entering any establishment for the repair of motors or motor vehicles, to carry out his or her duties under Part III;
 - (j) entering any ice shelter to carry out his or her duties under Part IV;
 - (k) entering any abandoned motor vehicle to carry out his or her duties under Part VI;
 - (l) entering any place where the provincial officer reasonably believes the permit and plates of a vehicle may be found in order to seize them in accordance with section 47a or 47b;
 - (m) where a pollutant as defined in Part IX is spilled and is likely to cause an adverse effect, entering any place for the purpose of carrying out any duty imposed or order or direction made or given under that Part;
 - (n) making necessary excavations;

- (o) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (p) taking samples;
- (q) recording or copying any information by any method;
- (r) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (s) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (r) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and
- (t) making reasonable inquiries of any person, orally or in writing.

Requirement
to stop

(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.

Identification
of provincial
officers

(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.

Power to
exclude
persons

(4) A provincial officer who exercises the power set out in clause (1) (t) may exclude from the questioning any person except counsel for the individual being questioned.

Entry to
dwellings

(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 127.

Power to
administer
other statutes
R.S.O. 1980,
cc. 361, 376

(6) A provincial officer who exercises any power set out in subsection (1) or 126a (1) may, if the provincial officer is designated as such under the *Ontario Water Resources Act* or the *Pesticides Act*, as the case may be, do anything authorized by,

- (a) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*; or

(b) subsection 19 (1) of the *Pesticides Act*.

R.S.O. 1980,
c. 376

126a.—(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by,

Detention or
removal

- (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
- (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 127.

Limitation

(3) Subsection 126 (3) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1).

Idem

43.—(1) Subsection 127 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 126 (1) (a) to (s) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

Entry or
inspection
order

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order

under this section without delay if access is denied;
or

- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 126 (1) (a) to (s) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 126 (1) (a) to (s) and specified in the order for the period of time set out in the order.

(2) Subsections 127 (1a), (1b) and (1c) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 20, are repealed and the following substituted therefor:

Detention or
removal
order

(1a) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 126a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

(3) Subsection 127 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 20, is repealed and the following substituted therefor:

Renewal

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (1a) before or after expiry for one or more periods each of which is not more than thirty days.

When to be
executed

(2a) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When notice
not required

(2b) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.

When notice
required

(2c) An order under this section for a reason mentioned in subsection (1a) shall not be issued or renewed except upon

application with notice to the person responsible for the thing to be detained or removed.

44. The said Act is amended by adding thereto the following sections:

127a. A provincial officer may detain samples and copies obtained under section 126 or 127 for any period and for any of the purposes of this Act and the regulations. Samples and copies

127b.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 126 or 127 if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention. Seizure

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized. Possession

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it. Notice of reason for seizure

127c.—(1) In this section, “offence” means an offence under this Act related to, Definition

(a) the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect; or

(b) hazardous waste or hauled liquid industrial waste.

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe, Search by provincial officer re actual pollution

(a) that an offence has been committed;

(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and

(c) that there are exigent circumstances that make it impractical to obtain a search warrant.

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence. Seizure

Receipt

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Report to justice

127d.—(1) A provincial officer who seizes any thing during an inspection or search under section 127b or 127c shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application of R.S.O. 1980, c. 400, ss. 143, 144

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 127b or 127c.

Use of force

127e. A provincial officer may use such force as is reasonably necessary,

- (a) to carry out an order or direction issued under this Part or Part IX;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

Restoration

127f. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made.

Condition

127g. It is a condition of every licence, permit, certificate of approval or provisional certificate of approval under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 126, 126a or 127 of this Act, section 10, 10a or 10b of the *Ontario Water Resources Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates.

R.S.O. 1980, cc. 361, 376

45.—(1) Clause 136 (1) (b) of the said Act is amended by striking out “depositing, addition, emission or” in the first and second lines.

(2) Subsection 136 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 23, is further amended by adding thereto the following clauses:

(ab) requiring the filing of returns concerning any matter regulated by or under this Act;

.

(la) requiring the payment of fees by applicants or any class of applicants for certificates of approval, and providing for refunds of the fees;

(lb) prescribing the amounts or the method of calculating the amounts of the fees for certificates of approval, and prescribing minimum and maximum amounts or the method of calculating the minimum and maximum amounts of the fees;

(lc) respecting the payment to municipalities of the fees for certificates of approval and the retention of all or part of the fees by the municipalities;

.

(o) requiring and regulating the storage, treatment and disposal of sewage in vessels and the equipment therefor, and prohibiting the use and installation of equipment for the storage, treatment or disposal of sewage in vessels unless the equipment and installation thereof conform to the regulations, and providing for and requiring the approval of the Director for any such equipment and prohibiting and regulating the discharge of sewage from such vessels;

(p) regulating and controlling, for the purpose of preventing or reducing the pollution of any water or places located on or adjacent to any water where moorings are provided for vessels or where any services are provided for vessels or the occupants thereof, and regulating and governing persons providing such moorings or services;

(q) defining sewage for the purposes of regulations made under clauses (o) and (p).

(3) Clause 136 (1) (n) of the said Act is amended by striking out "for" in the second line and in the third line.

(4) Clause 136 (2) (b) of the said Act is amended by striking out "emission" in the fourth line and inserting in lieu thereof "discharge".

(5) Clause 136 (2) (c) of the said Act is amended by striking out "emission" in the fourth line and in the seventh line and inserting in lieu thereof in each instance "discharge".

(6) Clause 136 (2) (d) of the said Act is repealed and the following substituted therefor:

- (d) prescribing the standards of emission into the natural environment of any contaminant with which any motor or motor vehicle or any class or type of motor or motor vehicle shall comply and providing for the testing and inspection of any such motor, motor vehicle, class or type.

(7) Clauses 136 (3) (a), (b) and (c) of the said Act are repealed.

(8) Clause 136 (6) (c) of the said Act is amended by inserting after "sale" where it appears the first time in the second line "advertising".

(9) Subclause 136 (6) (c) (i) of the said Act is amended by inserting after "sale" where it appears the first time in the second line "advertising".

(10) Clause 136 (6) (d) of the said Act is amended by inserting after "sale" where it appears the first time in the first line "stocking, display, advertising".

(11) Clause 136 (6) (j) of the said Act is amended by inserting after "use" in the first line "advertising".

(12) Subsection 136 (7) of the said Act is amended,

- (a) in clause (a), by striking out "89 (1)" in the second line and inserting in lieu thereof "88 (1)";
- (b) in clause (b), by striking out "90 (1)" in the third line and inserting in lieu thereof "89 (1)";
- (c) in clause (c), by striking out "90 (1)" in the second line and inserting in lieu thereof "89 (1)"; and
- (d) in clause (d), by striking out "80 (2)" in the second line and inserting in lieu thereof "79 (2)".

46. The said Act is further amended by adding thereto the following section:

141.—(1) In this section,

Definitions

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Service of
offence
notice or
summons

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Employer

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons in respect of an offence under this Act on a corporation,

Corporation
R.S.O. 1980,
c. 400

- (a) that is or is required to be the holder of a document mentioned in clause 126 (1) (e);
- (b) that is subject to a document mentioned in clause 126 (1) (e); or
- (c) that is or is required to be the holder of a generator registration document mentioned in Regulation 309 of Revised Regulations of Ontario, 1980.

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Exception

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds

Permit holder
deemed
owner
R.S.O. 1980,
c. 198

to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

47. The said Act is further amended by adding thereto the following section:

Presiding
judge

145a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act.

48. Clause 146b (a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 15, is amended by striking out "Litter" in the second line and inserting in lieu thereof "Litter, Packaging and Containers".

49.—(1) Subsection 147 (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4 and amended by the Statutes of Ontario, 1986, chapter 68, section 16, is repealed and the following substituted therefor:

Penalty
where hauled
liquid
industrial
waste or
hazardous
waste
involved
R.S.O. 1980,
c. 361

(1) Where any person is convicted of an offence under this Act or under subsection 16 (1) of the *Ontario Water Resources Act* in respect of hauled liquid industrial waste or hazardous waste as designated in the regulations relating to Part V of this Act and the action or failure to act for which the person is convicted may result in an adverse effect, the person is, instead of the fine elsewhere provided for the offence, liable on conviction,

- (a) for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$5,000 on a first conviction and not less than \$4,000 and not more than \$15,000 on each subsequent conviction;
- (b) to imprisonment for a term of not more than one year; or
- (c) to both such fine and imprisonment.

(2) Subsection 147 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 16, is amended by striking out "any of the effects mentioned in clauses (1) (a)

to (h)” in the second and third lines and inserting in lieu thereof “an adverse effect”.

(3) Subsection 147 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 16, is amended by striking out “any of the effects mentioned in clauses (1) (a) to (h)” in the second and third lines and inserting in lieu thereof “an adverse effect”.

50. Subsection 147a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 17, is amended by striking out “deposit, addition, emission or” in the second and third lines and in the sixth line.

PART II

Ontario Water Resources Act

51. Section 1 of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 68, section 18, is further amended by re-lettering clause (ia) as (ib) and by adding thereto the following clauses:

(ia) “discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

.

(ja) “inspection” includes an audit, examination, survey, test and inquiry;

.

(oa) “person” includes a municipality;

(ob) “place” includes a building, structure, machine, vehicle or vessel;

.

(qa) “provincial officer” means a person who is designated under section 4.

52. Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 51, section 1, is further amended by adding thereto the following subsections:

Provincial
officers

(3) The Minister may designate in writing one or more officers or employees of the Ministry or other persons as provincial officers for the purposes of this Act and the regulations.

Idem

1988, c. ...

(4) A person who is an agent of the Minister for the purposes of subsection 10 (1), as it existed immediately before section 52 of the *Environment Statute Law Amendment Act, 1988* comes into force, shall be deemed to be designated under subsection (3) until the 30th day of June, 1989.

53. Section 6 of the said Act is repealed and the following substituted therefor:

Hearing
before
Environ-
mental
Assessment
Board

6.—(1) Upon receipt of a notice from a Director under subsection 25 (1), 26 (1) or 43 (4), the Environmental Assessment Board shall hold a hearing with respect to the subject-matter of the notice, unless subsection 6a (2) applies.

Parties

(2) The applicant, the Director and any other persons specified by the Environmental Assessment Board shall be parties to the hearing.

Application
of
R.S.O. 1980,
c. 140

(3) Subsections 18 (16), (17) and (18) and sections 20 and 23 of the *Environmental Assessment Act* do not apply to a decision of the Environmental Assessment Board made in a hearing under this section.

Decision

(4) The Environmental Assessment Board shall serve notice of its decision, together with reasons therefor, on the parties to the hearing, and the Director shall implement the decision.

Costs

(5) The Environmental Assessment Board may award the costs of a hearing before it.

Payment

(6) The Environmental Assessment Board may order by whom and to whom the costs are to be paid.

Assessment

(7) The Environmental Assessment Board may fix the amount of the costs awarded or direct that the amount be assessed and specify the scale according to which they are to be assessed and by whom they are to be assessed.

Government
funding not
to reduce
costs award

(8) The amount of the costs awarded to a person who intervened in a hearing under this section shall be fixed or assessed without any deduction of an amount paid to the person by the Crown in respect of the hearing that is repayable to the Crown.

6a.—(1) Where the Environmental Assessment Board has given notice of a hearing under this Act, any person objecting to the action proposed under subsection 25 (1) or 26 (1) or the order referred to in subsection 43 (2) may serve notice of the objection, together with the reasons in support of it, on the Board within fifteen days after the notice of hearing is given.

Notice of
objection

(2) If no objections are received within the fifteen days, or if the Environmental Assessment Board is of the opinion that the objections are insufficient, the Environmental Assessment Board is not required to hold a hearing.

Hearing not
required

(3) Where the Environmental Assessment Board considers it appropriate in the circumstances, it may extend the period provided under subsection (1) for serving an objection.

Extension

6b.—(1) A party to a proceeding under this Act before the Environmental Assessment Board may appeal from its decision,

Appeal from
decision of
Environ-
mental
Assessment
Board

(a) on a question of law, to the Divisional Court;

(b) on a question other than a question of law, to the Lieutenant Governor in Council.

(2) An appeal under clause (1) (b) shall be made in writing within thirty days after the appealing party receives the decision of the Environmental Assessment Board.

Time to
appeal to
cabinet

(3) In an appeal under clause (1) (b), the Lieutenant Governor in Council shall confirm, alter or revoke the decision or order of the Environmental Assessment Board, substitute for the decision of the Board such decision as it considers appropriate or, by notice in writing to the Environmental Assessment Board, require it to hold a new hearing with respect to all or any part of the subject-matter of the decision.

Powers of
Cabinet on
appeal

54.—(1) Clause 7 (1) (a) of the said Act is amended by striking out “municipalities and” in the third line.

(2) Clause 7 (1) (b) of the said Act is amended by striking out “municipalities and” in the third line.

(3) Subsection 7 (2) of the said Act is amended by striking out “municipalities or” in the third line.

55. The said Act is amended by adding thereto the following sections:

Order, etc.,
binds
successor or
assignee

9a.—(1) An order, approval, requirement, direction or report of a court, the Minister or a Director under this Act is binding upon the successor or assignee of the person to whom it is directed.

Record

(2) The Ministry shall maintain a record of orders, approvals, requirements, directions and reports issued under this Act.

Record of
expiry,
revocation,
setting aside

(3) When an order, approval, requirement, direction or report has expired or is revoked or set aside, the Ministry shall include that fact in the record.

Search of
records

(4) The Ministry shall, upon the request of any person, make a search of the records and inform the person making the request as to whether an order, approval, requirement, direction or report has been issued and shall permit inspection of it.

Definitions

9b. In sections 10 to 10i, “adverse effect”, “contaminant” and “natural environment” have the same meanings as in the *Environmental Protection Act*.

R.S.O. 1980,
c. 141

56.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

Inspection by
provincial
officer

(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

- (a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, eliminated or ameliorated and the natural environment restored;
- (b) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;
- (c) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, certificate of approval, provisional

certificate of approval, program approval, agreement or order under this Act or the regulations, or

- (ii) the discharge of a contaminant into the natural environment;
- (d) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations;
- (e) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a certificate of approval, provisional certificate of approval or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;
- (f) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (g) making necessary excavations;
- (h) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (i) taking samples;
- (j) recording or copying any information by any method;
- (k) requiring the production of any document that is required to be kept under this Act or the regu-

lations, and any other document that is related to the purposes of the inspection;

- (l) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (k) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and
- (m) making reasonable inquiries of any person, orally or in writing.

(2) Section 10 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 22, is further amended by adding thereto the following subsections:

Requirement to stop

(3a) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.

Identification of provincial officer

(3b) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.

Power to exclude persons

(3c) A provincial officer who exercises the power set out in clause (1) (m) may exclude from the questioning any person except counsel for the individual being questioned.

Entry to dwellings

(3d) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 10b.

Power to administer other statutes

(3e) A provincial officer who exercises any power set out in subsection (1) or 10a (1) may, if the provincial officer is designated as such under the *Environmental Protection Act* or the *Pesticides Act*, as the case may be, do anything authorized by,

R.S.O. 1980, cc. 141, 376

- (a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or
- (b) subsection 19 (1) of the *Pesticides Act*.

57. The said Act is further amended by adding thereto the following sections:

Detention or removal

10a.—(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the

natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by,

- (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
- (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 10b. Limitation

(3) Subsection 10 (3b) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1). Idem

10b.—(1) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a provincial officer that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 10 (1) (a) to (l) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because, Entry or inspection order

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 10 (1) (a) to (l);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 10 (1) (a) to (l);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 10 (1) (a) to (l) without the order might defeat the purpose thereof or endanger

human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 10 (1) (a) to (1) and specified in the order for the period of time set out in the order.

Detention or removal order

(2) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 10a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

Renewal

(3) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (2) before or after expiry for one or more periods each of which is not more than thirty days.

When to be executed

(4) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When notice not required

(5) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.

When notice required

(6) An order under this section for a reason mentioned in subsection (2) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.

Samples and copies

10c. A provincial officer may detain samples and copies obtained under section 10 or 10b for any period and for any of the purposes of this Act and the regulations.

Seizure

10d.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 10 or 10b if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Possession

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Notice of reason for seizure

10e.—(1) In this section, “offence” means an offence under this Act related to the discharge of any material that may impair the quality of the water of any water or water-course.

Definition

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

Search by provincial officer re actual pollution

(a) that an offence has been committed;

(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and

(c) that there are exigent circumstances that make it impractical to obtain a search warrant.

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Seizure

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Receipt

10f.—(1) A provincial officer who seizes any thing during an inspection or search under section 10d or 10e shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Report to justice

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 10d or 10e.

Application of R.S.O. 1980, c. 400, ss. 143, 144

10g. A provincial officer may use such force as is reasonably necessary,

Use of force

(a) to carry out an order issued under this Act;

R.S.O. 1980,
c. 400

(b) to execute a warrant issued under the *Provincial Offences Act*; or

(c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

Restoration

10h. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made.

Condition

R.S.O. 1980,
cc. 141, 376

10i. It is a condition of every licence, permit, certificate of approval or provisional certificate of approval under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 10, 10a or 10b of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates.

58. Section 14 of the said Act is amended by striking out “deposited or” in the fourth line and in the fifth line.

59. Subsection 15 (3) of the said Act is repealed and the following substituted therefor:

Injunction to
prevent
pollution of
water

(3) Where any person is discharging or causing or permitting the discharge of any material of any kind into or in or near any water or watercourse that, in the opinion of the Minister, may impair the quality of the water in such water or watercourse, the Minister may apply without notice to a judge of the Supreme Court or of the District Court of the district in which the material is being discharged for an order prohibiting such discharge for such period not exceeding twenty-one days and on such terms and conditions as the judge considers proper, and such order may, on application to a judge of the Supreme Court or of the District Court of the district in which the material is being discharged, be continued for such period and on such terms and conditions as the judge considers proper.

60.—(1) Subsection 16 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 23, is further amended by striking out “municipality or” in the first line and by striking out “or deposits” and “or deposit” in the second line.

(2) Subsection 16 (3) of the said Act is amended by striking out “municipality or” in the first line, by striking out “or deposits” in the first and second lines, by striking out “or deposit” in the second line and in the third line and by striking out “deposit” in the last line.

(3) Subsection 16 (4), as amended by the Statutes of Ontario, 1986, chapter 68, section 23, and subsections (5) and (6) of the said Act are repealed.

61. Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

(1) A Director may by order prohibit or regulate the discharge by any person of sewage into any water or watercourse, and such order may be amended, varied or revoked by the Director as the Director considers desirable.

Prohibiting
or regulating
discharge of
sewage

62. Section 18 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 25, is repealed and the following substituted therefor:

18. Where, in the opinion of a Director, it is in the public interest to do so, the Director, by order, may require a person who owns, manages or has control of a sewage works, water works or other facility which may discharge material into a water or watercourse that may impair the quality of the water, to do any one or more of the following:

Measures to
alleviate
effects of
impairment
of quality of
water

1. To have available at all times, or during the periods specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order to prevent, reduce or alleviate any impairment of the quality of the water or the effects of any impairment of the quality of the water.
2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
3. To implement the procedures specified in the order.
4. To take all steps necessary to ensure that the procedures specified in the order will be implemented in the event that a water or watercourse becomes impaired or may become impaired.

5. To monitor and record the quality and quantity of any water specified in the order and to report thereon to the Director.
6. To study and to report to the Director upon,
 - i. measures to control the discharge into a water or watercourse of a material specified in the order,
 - ii. the effects of the discharge into a water or watercourse of a material specified in the order,
 - iii. the water or watercourse into which a material specified in the order may be discharged.

63.—(1) Clause 19 (1) (b) of the said Act is amended by striking out “deposited” in the third line.

(2) Subsection 19 (1) of the said Act is amended by striking out “municipality or” in the eleventh line.

(3) Clause 19 (2) (b) of the said Act is amended by striking out “deposits” in the first line.

64.—(1) Subsection 23 (1) of the said Act is repealed and the following substituted therefor:

Approval of
Director for
water works

(1) No person shall establish, alter, extend or replace new or existing water works except under and in accordance with an approval granted by a Director.

Director may
require
information

(2) The Director may require an applicant for an approval under subsection (1) to submit plans, specifications, engineer's report and other information and to carry out and report on tests or experiments relating to the water supply or the work to be undertaken and, subject to subsection (4), the Director may grant the approval.

(2) Subsection 23 (4) of the said Act is repealed and the following substituted therefor:

Approval
may be
subject to
conditions,
etc.

(4) If, in the opinion of a Director, it is in the public interest to do so, the Director may,

- (a) refuse to grant the approval;
- (b) grant the approval on such terms and conditions as the Director considers necessary;

- (c) impose new terms and conditions to the approval;
- (d) alter the terms and conditions of the approval; or
- (e) revoke or suspend the approval.

(3) Subsection 23 (5) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed.

(4) Subsection 23 (6) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed and the following substituted therefor:

(6) The owner of water works shall make returns to a Director of the matters and within the time specified by the Director in a direction to the owner.

Returns from
water works

(5) Subsection 23 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed and the following substituted therefor:

(8) No person shall use or operate water works for which an approval is required under subsection (1) unless the required approval has been granted and complied with.

No use or
operation
without
approval

65.—(1) Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

(1) No person shall establish, alter, extend or replace new or existing sewage works except under and in accordance with an approval granted by a Director.

Approval of
Director

(2) A Director may require an applicant for an approval under subsection (1) to submit plans, specifications, engineer's report and other information and to carry out and report on tests or experiments relating to the location of the discharge of effluent or the work to be undertaken and, subject to subsection (4), the Director may grant the approval.

Director may
require
information

(2) Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

(4) If, in the opinion of a Director, it is in the public interest to do so, the Director may, subject to subsections 25 (1) and 26 (1),

Certificate of
approval may
be subject to
conditions,
etc.

- (a) refuse to grant the approval;
- (b) grant the approval on such terms and conditions as the Director considers necessary;

- (c) impose new terms and conditions to the approval;
- (d) alter the terms and conditions of the approval; or
- (e) revoke or suspend the approval.

(3) Subsection 24 (5) of said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 30, is repealed and the following substituted therefor:

No use or
operation
without
approval

(5) No person shall use or operate sewage works for which an approval is required under subsection (1) unless the required approval has been granted and complied with.

66.—(1) Subsection 25 (1) of the said Act is repealed and the following substituted therefor:

Sewage
works
established or
extended in
or into
another
municipality

(1) Before taking any action under subsection 24 (4) with respect to a sewage works established or extended or to be established or extended by a municipality in or into another municipality or territory without municipal organization, a Director shall, by a notice in writing, require the Environmental Assessment Board to hold a hearing.

Notice of
hearing

(1a) The Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of the municipality in or into which the sewage works are being or have been established or extended and to clerks of such other municipalities and to such other persons and in such manner as the Environmental Assessment Board considers appropriate.

Contents of
notice

(1b) The notice of hearing shall state that a hearing is not required to be held if no objections are made in accordance with subsection 6a (1).

(2) Subsection 25 (3) of the said Act is repealed.

(3) Subsection 25 (10) of the said Act is amended by inserting after "person" in the second line "other than a municipality".

67.—(1) Subsection 26 (1) of the said Act is repealed and the following substituted therefor:

Sewage
works
established or
extended
within a
municipality

(1) Before taking any action under subsection 24 (4) with respect to a sewage works established or extended or to be established or extended by a person within a single municipality, a Director may, by a notice in writing, require the Environmental Assessment Board to hold a hearing.

(1a) Where a hearing is to be held, the Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of the municipality and to such other persons and in such manner as the Environmental Assessment Board considers appropriate.

Notice of
hearing

(1b) The notice of hearing shall state that a hearing is not required to be held if no objections are made in accordance with subsection 6a (1).

Contents of
notice

(2) Subsection 26 (2) of the said Act is repealed.

(3) Subsection 26 (3) of the said Act is amended by inserting after "person" in the second line "other than a municipality".

68. Section 30 of the said Act is repealed and the following substituted therefor:

30. Sewage works that are being or have been constructed, maintained or operated in compliance with this Act, the *Environmental Protection Act* and the regulations under both Acts and with any order, direction or approval issued under the authority of this Act or any predecessor of any provision of this Act shall be deemed to be under construction, constructed, maintained or operated by statutory authority.

Construction
or operation
of approved
sewage works
by statutory
authority
R.S.O. 1980,
c. 141

69. Section 31 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 31, is repealed and the following substituted therefor:

31. The owner of sewage works shall make returns to a Director of the matters and within the time specified by the Director in a direction to the owner.

Returns from
sewage works

70. Subsection 32 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 32, is repealed.

71. Subsection 33 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 33, is repealed.

72. Subsection 34 (6) of the said Act is amended by striking out "discharged" in the last line and inserting in lieu thereof "fulfilled".

73. Section 42a of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 51, section 2, is amended by striking out "municipality or other" in the first line.

74.—(1) Subsection 43 (4) of the said Act is repealed and the following substituted therefor:

Hearing

(4) A Director shall, before making an order under subsection (2), require the Environmental Assessment Board, by a notice in writing, to hold a hearing.

Notice

(4a) The Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of each municipality affected by the proposed order and to such persons and in such manner as the Environmental Assessment Board considers appropriate.

Contents of
notice

(4b) The notice of hearing shall state that a hearing is not required to be held if no objections to the establishment or extension are made in accordance with subsection 6a (1).

(2) Subsection 43 (6) of the said Act is amended by inserting after "every" where it appears the second time in the third line "other".

(3) Subsection 43 (13) of the said Act is amended by striking out "municipality or" in the first line and by striking out "municipality and" in the thirteenth and fourteenth lines.

75.—(1) Subsection 44 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 50, section 2, 1983, chapter 51, section 3 and 1986, chapter 68, section 35, is further amended by striking out "Subject to the approval of the Lieutenant Governor in Council, the Minister" in the first and second lines and inserting in lieu thereof "The Lieutenant Governor in Council".

(2) The said subsection 44 (1) is further amended by adding thereto the following clauses:

- (aa) requiring a person who owns, is in occupation or has the charge, management or control of a source of sewage to monitor, record and report on the sources of sewage including, but not limited to, materials and methods of production used and intended to be used, the wastes and sewage that will or are likely to be generated, the water or water-course, water works, sewage works or plumbing that may be affected by the discharge of the sewage, and to perform and report to the Director on research respecting methods of reducing or preventing the generation of wastes and sewage from the sources of sewage;
-

- (ja) requiring the payment of fees by applicants or classes of applicants for approvals under section 23 and section 24, and providing for refunds of the fees;
- (jb) prescribing the amounts or the method of calculating the amounts of the fees for approvals, and prescribing minimum and maximum amounts or the method of calculating the minimum and maximum amounts of the fees;
- (jc) respecting the payment to municipalities of the fees for approvals and the retention of all or part of the fees by the municipalities.

(3) Clause 44 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) adopting by reference, in whole or in part, with or without changes, the standards made or adopted by the Canadian Standards Association respecting pipes, fittings, fixtures and materials used in plumbing, and providing for the testing and marking of such pipes, fittings, fixtures and materials or any class or classes thereof by an organization accredited by the Standards Council of Canada for that purpose, and prohibiting the use in plumbing of pipes, fittings, fixtures and materials that are not marked as approved by an organization accredited by the Standards Council of Canada for that purpose; and

.

76. Section 49 of the said Act is repealed.

77. The said Act is further amended by adding thereto the following section:

49a.—(1) In this section,

Definitions

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be

Service of
offence
notice or
summons

deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Employer

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Corporation
R.S.O. 1980,
cc. 400, 141

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons in respect of an offence under this Act on a corporation that is or is required to be the holder of or is subject to a document mentioned in clause 126 (1) (e) of the *Environmental Protection Act*.

Exception

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Permit holder
deemed
owner
R.S.O. 1980,
c. 198

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

78.—(1) Subsection 51 (1) of the said Act is amended by inserting after "by" in the last line "order of".

(2) Subsection 51 (2) of the said Act is amended by inserting after "by" in the last line "order of".

79. Section 52 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 38, is repealed and the following substituted therefor:

Discharge of
sewage into
sewage works

52. If, in the opinion of a Director, a discharge of sewage into a sewage works may interfere with the proper operation of a sewage works, the Director may by order require the per-

son that discharges or causes or permits the discharge of sewage,

- (a) to stop or regulate such discharge; or
- (b) to take action in accordance with and within the time required by the order.

80.—(1) Subsection 61 (1) of the said Act is amended by striking out “or municipality” in the fourth line and in the eighth line.

(2) Subsection 61 (2) of the said Act is repealed and the following substituted therefor:

(2) When a Director,

When
approval,
etc., refused

- (a) refuses to issue or renew, or cancels or suspends a licence or permit, or refuses to grant an approval;
- (b) imposes terms and conditions in issuing a licence or permit or in granting an approval;
- (c) alters the terms and conditions of a permit or approval after it is issued or granted;
- (d) imposes new terms and conditions on a permit or approval after it is issued or granted; or
- (e) gives or makes any notice, direction, report or order, except an order under section 43,

the Director shall serve written notice of the refusal, cancellation or suspension referred to in clause (a), together with the terms and conditions imposed or altered as referred to in clause (b), (c) or (d), or a written copy of the notice, direction, report or order referred to in clause (e), and written reasons therefor, upon the applicant or the person to whom the licence, permit, approval, direction, order, report or notice is issued or granted.

(2a) The applicant or person may, by written notice served upon the Director and the Environmental Appeal Board within fifteen days after the service of the notice referred to in subsection (2), require a hearing by the Environmental Appeal Board.

Hearing may
be required

(2b) Subsections (2) and (2a) do not apply with respect to a decision of the Environmental Assessment Board that is

Exception

implemented by a Director in accordance with subsection 6 (3).

(3) Subsection 61 (4) of the said Act is amended by striking out "applicant, person or municipality" in the first line and inserting in lieu thereof "applicant or person".

81. The said Act is further amended by adding thereto the following sections:

Presiding
judge

65a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act.

Service

65b.—(1) Any notice, requirement, direction, order, report, decision or other document required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry.

When service
deemed
made

(2) Where service is made by registered mail, the service shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the document until a later date.

82. Subsection 67 (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out "municipality or other" in the first line.

83. Subsection 68 (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out "municipality or other" in the first line.

84. Section 69 of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is repealed and the following substituted therefor:

Subsequent
conviction

69. For the purposes of determining the penalty to which a person is liable under section 67 or 68, a conviction for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under,

- (a) this Act, other than an offence related to subsection 44 (2) or sections 45 to 48;

(b) the *Environmental Protection Act*, other than for an offence related to Part VII or Part VIII; or R.S.O. 1980, c. 141

(c) the *Pesticides Act*. R.S.O. 1980, c. 376

85. Section 73 of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out "municipality or other" in the third line and in the last line.

86. The said Act is further amended by striking out "municipality or" in each instance where it occurs,

(a) in section 28, clause 43 (2) (c), subsections 43 (3), 43 (8), 43 (9), 44 (1) and sections 55 and 60; and

(b) in the following provisions:

1. Subsection 56 (2), as enacted by the Statutes of Ontario, 1986, chapter 68, section 39.

2. Subsections 66 (1), 66 (2), 66 (3), 71 (1), 71 (2) and 71 (3), as enacted by the Statutes of Ontario, 1986, chapter 68, section 41.

PART III

Pesticides Act

87. Subsection 1 (1) of the *Pesticides Act*, being chapter 376 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 68, section 43, is further amended by re-lettering clause (ca) as (cb) and by adding thereto the following clauses:

(ca) "discharge", when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

.

(ga) "inspection" includes an audit, examination, survey, test and inquiry;

.

(ta) "place" includes a building, structure, machine, vehicle or vessel.

88. Section 4 of the said Act is amended by striking out “deposit, add, emit or” in the third line and by striking out “deposit, addition, emission or” in the fourth line.

89. Section 12 of the said Act is repealed and the following substituted therefor:

Term of
licence
1988, c. ...

12. A licence issued before or after section 89 of the *Environment Statute Law Amendment Act, 1988* comes into force expires as prescribed by the regulations.

90. Subsections 17 (2) and (3) of the said Act are repealed.

91. Section 19 of the said Act is repealed and the following substituted therefor:

Inspection by
provincial
officer

19.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

- (a) entering any place in which the provincial officer reasonably believes a pesticide can be found;
- (b) entering any place in or from which the provincial officer reasonably believes a pesticide is being, has been or may be discharged into the environment;
- (c) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence or order under this Act or the regulations, or
 - (ii) the discharge of a pesticide into the environment;
- (d) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence or order under this Act or the regulations;
- (e) stopping any vehicle or vessel that the provincial officer reasonably believes,

- (i) is or is required to be subject to or referred to in a permit, licence or order under this Act or the regulations,
 - (ii) contains a pesticide, or
 - (iii) is being or may be used in the performance of an extermination;
- (f) entering any place where a pesticide is stocked, displayed, sold or offered for sale;
 - (g) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
 - (h) taking samples;
 - (i) recording or copying any information by any method;
 - (j) requiring the production of any document that is required to be kept under this Act or the regulations and any other document that is related to the purposes of the inspection;
 - (k) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (j) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and
 - (l) making reasonable inquiries of any person, orally or in writing.

(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such. Requirement to stop

(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection. Identification of provincial officers

(4) A provincial officer who exercises the power set out in clause (1) (l) may exclude from the questioning any person except counsel for the individual being questioned. Power to exclude persons

Entry to
dwellings

(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 19a.

Power to
administer
other statutes
R.S.O. 1980,
cc. 141, 361

(6) A provincial officer who exercises any power set out in subsection (1) may, if the provincial officer is designated as such under the *Environmental Protection Act* or the *Ontario Water Resources Act*, as the case may be, do anything authorized by,

R.S.O. 1980,
c. 141

(a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or

R.S.O. 1980,
c. 361

(b) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*.

Inspection
order

19a.—(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 19 (1) (a) to (k) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 19 (1) (a) to (k) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 19 (1) (a) to (k) and specified in the order for the period of time set out in the order.

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) before or after expiry for one or more periods each of which is not more than thirty days. Renewal

(3) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes. When to be executed

(4) An order under this section may be issued or renewed upon application without notice. Notice not required

19b. A provincial officer may detain samples and copies obtained under section 19 or 19a for any period and for any of the purposes of this Act and the regulations. Samples and copies

19c.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under this Act if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention. Seizure

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized. Possession

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it. Notice of reason for seizure

19d.—(1) In this section, “offence” means an offence under section 4, 6 or 7. Definition

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe, Search by provincial officer re actual pollution

(a) that an offence has been committed;

(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and

(c) that there are exigent circumstances that make it impractical to obtain a search warrant.

Seizure

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Receipt

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Report to justice

19e.—(1) A provincial officer who seizes any thing during an inspection or search under section 19c or 19d shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application of
R.S.O. 1980,
c. 400,
ss. 143, 144

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 19c or 19d.

Use of force

19f. A provincial officer may use such force as is reasonably necessary,

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act.

Condition

R.S.O. 1980,
cc. 141, 361

19g. It is a condition of every permit or licence under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 19 or 19a of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 10, 10a or 10b of the *Ontario Water Resources Act* of any place, other than any room actually used as a dwelling, to which the permit or licence relates.

92.—(1) Clause 21 (2) (a) of the said Act is amended by striking out “deposit, addition, emission or” in the first and second lines.

(2) Clause 21 (2) (b) of the said Act is amended by striking out “deposit, addition, emission or” in the first line.

93. Section 22 of the said Act is amended by striking out “deposits, adds, emits or” in the first line.

94. Subsection 23 (1) of the said Act is amended by striking out “deposits, adds, emits or” in the first line and by striking out “deposit, addition, emission or” in the second line.

95.—(1) Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

(1) An order of a court, the Minister, Director or a provincial officer under this Act is binding upon the successor or assignee of the person to whom it is directed. Order binds successor or assignee

(2) Subsection 24 (3) of the said Act is amended by inserting after “rescinded” in the first line “or set aside”.

96. Section 28 of the said Act is amended by adding thereto the following paragraph:

3a. prescribing expiry dates or the method of determining the expiry dates of licences or any class of licences.

97. The said Act is amended by adding thereto the following section:

33a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act. Presiding judge

98. Section 35 of the said Act is repealed.

99. The said Act is further amended by adding thereto the following section:

35a.—(1) In this section, Definitions

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons. Service of offence notice or summons

Employer

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Corporation
R.S.O. 1980,
c. 198

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons on a corporation that is or is required to be the holder of or is subject to a document mentioned in clause 19 (1) (d) in respect of an offence under this Act.

Exception

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Permit holder
deemed
owner
R.S.O. 1980,
c. 198

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

Commence-
ment

100. This Act comes into force on the day it receives Royal Assent.

Short title

101. The short title of this Act is the *Environment Statute Law Amendment Act, 1988*.

Bill 148

An Act to amend certain Acts respecting the Environment

The Hon. J. Bradley
Minister of the Environment

<i>1st Reading</i>	June 2nd, 1988
<i>2nd Reading</i>	June 21st, 1988
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The Bill has two major purposes: to add to the enforcement provisions of the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Pesticides Act* greater precision and greater protection of the rights of individuals in light of developing jurisprudence under section 8 of the Canadian Charter of Rights and Freedoms; and to add greater procedural fairness to the hearing provisions of the three statutes.

The Bill is divided into three parts, one for each statute.

PART I—*Environmental Protection Act*

SECTIONS 3 (2), 4 (2). The Director is required to give the public notice of control orders and stop orders.

SECTIONS 5, 7, 8, 13. The Director's powers with respect to certificates of approval and program approvals are spelled out in full. The Director's powers with respect to preventive orders are expanded.

SECTION 11 (2). The provision in subsection 14 (3) of the Act for the future repeal of the notification requirements in subsections 14 (1) and 14 (2) is itself repealed.

SECTION 14. Court orders are made binding on successors and assignees.

SECTION 15. The definition of "motor" for Part III of the Act is limited to a motor used in a vehicle.

SECTION 16. The Bill requires that motor vehicles advertised for sale must comply with the regulations concerning emissions.

SECTIONS 19, 20, 21, 22, 23, 41. The Bill provides that hearings for certificates of approval for waste disposal sites and waste management systems be held by the Environmental Assessment Board. The Environmental Assessment Board is empowered to make decisions, which must be implemented by the Director, and to award costs. Decisions of the Environmental Assessment Board may be appealed to Divisional Court and Cabinet.

SECTIONS 27, 48. The heading to Part VIII of the Act is amended to better reflect its content.

SECTIONS 1 (5), 32, 42, 43. The Bill creates a comprehensive code of the inspection, search and seizure powers for the enforcement of the Act.

SECTION 45. The regulation-making powers are expanded.

Subsection 136 (7) of the Act incorrectly refers to sections 89, 90 and 80. The Bill corrects the references to sections 88, 89 and 79.

SECTION 46. Special rules are established to facilitate the service of an offence notice or summons on owners of and on employers of drivers of vehicles for offences under the Act.

SECTION 47. Crown counsel may elect that a trial for an offence under the Act be heard by a provincial judge instead of a justice of the peace.

MISCELLANEOUS. The term "discharge" is redefined and the Act is amended throughout by deleting the terms included in the definition.

"Adverse effects" is redefined in the singular and is used to replace descriptive language throughout the Act.

The term "person" is redefined to omit the reference to the Crown since it is expressly bound by section 19 of the Act.

PART II—*Ontario Water Resources Act*

SECTIONS 51, 52. The Minister may designate provincial officers to enforce the Act.

SECTIONS 53, 67, 68, 75. Hearings before the Environmental Assessment Board are dealt with as in Part I.

SECTION 55. Court orders are made binding on successors and assignees.

A register of orders, approvals, requirements, directions and reports, similar to that in the existing *Environmental Protection Act*, is created.

SECTIONS 55, 56, 57. A comprehensive code of inspection, search and seizure powers, parallel to that in Part I, is added.

SECTION 61 (3). Section 16 of the Act is re-enacted and the exemption in subsection 16 (4) of the Act from the notification requirements and the provision in subsection 16 (6) for the future repeal of the notification requirements are deleted.

SECTIONS 61 (3), 65 (3), 65 (5), 66 (3), 71, 72. General offence provisions that are encompassed in section 66 of the Act are deleted.

SECTIONS 63, 65, 66, 81 (2). The amendments to the Directors' powers with respect to certificates of approval and preventive orders are parallel to those in Part I.

SECTIONS 65 (4), 70. The time in which certain returns must be filed is left to the discretion of the Directors.

SECTION 69. The language of section 30 of the Act is simplified.

SECTION 76. The regulation-making powers are expanded.

SECTION 77. The provision for multiple informations is repealed since it is provided for in the *Provincial Offences Act*.

SECTION 78. Special rules for the service of an offence notice or summons on owners of and employers of drivers of vehicles, as in Part I, are added to the Act.

SECTION 79. Ministerial directions under section 51 of the Act are required to be made by order.

SECTION 82. A provision allowing Crown counsel to elect trial by a provincial judge, as in Part I, as well as general rules for service, are added to the Act.

MISCELLANEOUS. As in Part I, "discharge" is redefined. "Person" is defined to include a municipality, parallel to the definitions in the *Environmental Protection Act* and the *Pesticides Act*. "Waters" is defined and used throughout the Act.

PART III—*Pesticides Act*

SECTIONS 89, 92, 93. There is a code of inspection, search and seizure powers which parallels that in Part I.

SECTIONS 91, 99. The expiry date of licences will be prescribed by regulation.

SECTION 94. The Director is required to give the public notice of stop orders.

SECTION 98. As in Parts I and II, court orders are made binding on successors and assignees.

SECTION 100. The Crown is entitled to elect trial by provincial judge, as in Parts I and II.

SECTION 101. The provision for multiple informations is repealed.

SECTION 102. Service on owners of and employers of drivers of vehicles is dealt with as in Parts I and II.

MISCELLANEOUS. The definition of "discharge" is amended, as in Parts I and II.

Bill 148

1988

**An Act to amend
certain Acts respecting the Environment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

Environmental Protection Act

1.—(1) Clause 1 (1) (a) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1986, chapter 68, section 1, is amended by striking out “effects” in the first line and inserting in lieu thereof “effect”.

(2) Clause 1 (1) (c) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 1, is repealed and the following substituted therefor:

- (c) “contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.

(3) Clause 1 (1) (ca) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 1, is repealed and the following substituted therefor:

- (ca) “discharge”, when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak.

(4) Clause 1 (1) (l) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 1, is repealed and the following substituted therefor:

- (l) “person” includes a municipality as defined in this subsection.

(5) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 1 and 1986, chapter 68, section 1, is further amended by adding thereto the following clauses:

(da) "inspection" includes an audit, examination, survey, test and inquiry;

.

(ma) "place" includes a building, structure, machine, vehicle or vessel.

(6) Clause 1 (1) (p) of the said Act is amended by striking out "adds to, emits or" in the first and second lines.

2. Subsection 5 (1) of the said Act is amended by striking out "deposit in, add to, emit or" in the first line and by striking out "addition to, emission or" in the fourth line.

3.—(1) Section 6 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 3, is further amended by striking out "added to, emitted or" in the second and third lines.

➡
(2) The said section 6 is further amended by adding thereto the following subsection:

Public notice (2) The Director shall give notice of the control order to every municipality in which the contaminant is discharged and to the public in such manner as the Director considers appropriate. ▲

➡
4.—(1) Section 7 of the said Act is amended by striking out "adding to, emitting or" in the third line.

➡
(2) The said section 7 is further amended by adding thereto the following subsection:

Public notice (2) The Director shall give notice of the stop order to every municipality in which the contaminant is discharged and to the public in such manner as the Director considers appropriate. ▲

5.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

Approval of Director (1) No person shall, except under and in accordance with a certificate of approval issued by the Director,

- (a) construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water; or
- (b) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural environment other than water or the rate or manner of discharge of a contaminant into any part of the natural environment other than water may be altered.

(2) Subsection 8 (2) of the said Act is amended by striking out “emission or” in the seventh line.

(3) Clause 8 (3) (c) of the said Act is repealed and the following substituted therefor:

- (c) any equipment, apparatus, mechanism or thing in or used in connection with a building or structure designed for the housing of not more than three families where the only contaminant produced by such equipment, apparatus, mechanism or thing is sound or vibration.

(4) Subsection 8 (4) of the said Act is repealed and the following substituted therefor:

(4) The Director may refuse to issue a certificate of approval or may issue a certificate of approval on such terms and conditions as the Director considers necessary, Powers of
Director

- (a) to ensure that any construction, alteration, extension, replacement, use or operation of a plant, structure, equipment, apparatus, mechanism or thing referred to in clause (1) (a) or that any alteration of a process or rate of production referred to in clause (1) (b) will result in compliance with this Act and the regulations and any order or approval hereunder; or
- (b) on probable grounds, to prevent or alleviate an adverse effect.

(5) The Director may,

Idem

- (a) alter any terms and conditions in a certificate of approval or impose new terms and conditions; or

(b) revoke or suspend a certificate of approval,

as the Director considers necessary for the reasons set out in clause (4) (a) or (b).

Exception

(6) A person to whom the Director has issued a certificate of approval under subsection (1) may make any changes in respect of which it is impractical to first obtain an amendment to the certificate if,

(a) the changes are not capable of increasing the potential for discharge of a contaminant into the natural environment; and

(b) the Director is notified in writing forthwith of the changes.

No use or operation without certificate of approval

(7) No person shall use or operate a plant, structure, equipment, apparatus, mechanism or thing for which a certificate of approval is required under clause (1) (a) unless the required certificate of approval has been issued and complied with.

6. Subsection 9 (1) of the said Act is amended by striking out “addition to, emission or” in the third line.

7. Section 10 of the said Act is amended by adding thereto the following subsections:

Amendment or revocation

(2) The Director may, by order, amend or revoke a program approval that was issued in error or that no longer adequately provides for the protection and conservation of the natural environment.

Amendment or revocation on consent

(3) The Director may, by order, amend or revoke a program approval with the consent of the person to whom the program approval is directed.

No hearing for amendment or revocation on consent

(4) Subsection 122 (1) does not entitle any person to a hearing in respect of an amendment or revocation of a program approval in accordance with a consent mentioned in subsection (3).

8. Section 11 of the said Act is amended by inserting after “approval” in the first line “or order”.

9. Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

(1) Every person,

- (a) who discharges into the natural environment; or
- (b) who is the person responsible for a source of contaminant that discharges into the natural environment,

Ministry to
be notified
when
contami-
nation
exceeds
permitted
level

any contaminant in an amount, concentration or level in excess of that prescribed by the regulations shall forthwith notify the Ministry of the discharge.

10. Section 13 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 4, is repealed and the following substituted therefor:

13.—(1) Notwithstanding any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect.

Prohibition

(2) Subsection (1) does not apply, in respect of an adverse effect referred to in subclause 1 (1) (a) (i), to animal wastes disposed of in accordance with normal farming practices.

Exception

11.—(1) Subsection 14 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 5, is repealed and the following substituted therefor:

(1) Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment out of the normal course of events that causes or is likely to cause an adverse effect shall forthwith notify the Ministry.

When
Ministry to
be notified

(2) Subsection 14 (3) of the said Act is repealed.

12. Section 16 of the said Act is amended by striking out "deposit, addition, emission or" in the first and second lines.

13. Subsection 17 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 52, section 6, is amended by adding thereto the following paragraphs:

- 5. To monitor and record the discharge into the natural environment of a contaminant specified in the order and to report thereon to the Director.
- 6. To study and to report to the Director upon,

- i. measures to control the discharge into the natural environment of a contaminant specified in the order,
- ii. the effects of the discharge into the natural environment of a contaminant specified in the order,
- iii. the natural environment into which a contaminant specified in the order is likely to be discharged.

14.—(1) Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

Order or
approval
binds
successor or
assignee

(1) An order or approval of a court, the Minister or the Director under this Act is binding upon the successor or assignee of the person to whom it is directed.

(2) Subsection 18 (3) of the said Act is amended by inserting after “revoked” in the first line “or set aside”.

15. Clause 20 (a) of the said Act is amended by adding at the end thereof “used in a vehicle”.

16.—(1) Subsection 21 (1) of the said Act is amended by striking out “offer or expose” in the first line and inserting in lieu thereof “or offer, expose or advertise”.

(2) Subsection 21 (2) of the said Act is amended by striking out “emission” in the third line and inserting in lieu thereof “discharge” and by striking out “offer or expose” in the fourth line and inserting in lieu thereof “or offer, expose or advertise”.

(3) Subsection 21 (3) of the said Act is amended by striking out “emission” in the third line and inserting in lieu thereof “discharge”.

17. Subsection 22 (2) of the said Act is amended by striking out “emission” in the third line and inserting in lieu thereof “discharge”.

18. Subsection 23 (2) of the said Act is repealed and the following substituted therefor:

Discharge of
waste
prohibited

(2) No person shall discharge or cause or permit the discharge of any waste on ice over any water except in accordance with the regulations.

19.—(1) Subsection 30 (1) of the said Act is amended by striking out “hold a public hearing” in the last line and inserting in lieu thereof “require the Environmental Assessment Board, by a notice in writing, to hold a hearing”.

(2) Subsection 30 (2) of the said Act is amended by striking out “Director” in the seventh line and inserting in lieu thereof “Environmental Assessment Board”.

20. Section 31 of the said Act is amended by striking out “holding a public hearing” in the last line and inserting in lieu thereof “requiring the Environmental Assessment Board to hold a hearing”.

21.—(1) Subsection 32 (1) of the said Act is amended by striking out “hold a public hearing” in the last line and inserting in lieu thereof “require the Environmental Assessment Board, by a notice in writing, to hold a hearing”.

(2) Subsection 32 (2) of the said Act is amended by striking out “Director” in the last line and inserting in lieu thereof “Environmental Assessment Board”.

22. Section 33 of the said Act is repealed and the following substituted therefor:

33.—(1) Upon receipt of a notice from the Director under section 30, 32 or 35, the Environmental Assessment Board shall hold a hearing with respect to the subject-matter of the notice.

Hearing
before
Environ-
mental
Assessment
Board

(2) The applicant, the Director and any other persons specified by the Environmental Assessment Board shall be parties to the hearing.

Parties

(3) Subsections 18 (16), (17) and (18) and sections 20 and 23 of the *Environmental Assessment Act* do not apply to a decision of the Environmental Assessment Board made in a hearing under this section.

Application
of
R.S.O. 1980,
c. 140

(4) The Environmental Assessment Board shall serve notice of its decision, together with reasons therefor, on the parties to the hearing, and the Director shall implement the decision.

Decision

(5) The Environmental Assessment Board may award the costs of a hearing before it.

Costs

(6) The Environmental Assessment Board may order by whom and to whom the costs are to be paid.

Payment

Assessment

(7) The Environmental Assessment Board may fix the amount of the costs awarded or direct that the amount be assessed and specify the scale according to which they are to be assessed and by whom they are to be assessed.

Government
funding not
to reduce
costs award

(8) The amount of the costs awarded to a person who intervened in a hearing under this section shall be fixed or assessed without any deduction for an amount paid to the person by the Crown in respect of the hearing that is repayable to the Crown.

Appeal from
decision of
Environ-
mental
Assessment
Board

33a.—(1) A party to a proceeding under this Act before the Environmental Assessment Board may appeal from its decision,

(a) on a question of law, to the Divisional Court;

(b) on a question other than a question of law, to the Lieutenant Governor in Council.

Time to
appeal to
Cabinet

(2) An appeal under clause (1) (b) shall be made in writing within thirty days after the appealing party receives the decision of the Environmental Assessment Board.

Powers of
Cabinet on
appeal

(3) In an appeal under clause (1) (b), the Lieutenant Governor in Council shall confirm, alter or revoke the decision of the Environmental Assessment Board, substitute for the decision of the Board such decision as it considers appropriate or, by notice in writing to the Environmental Assessment Board, require it to hold a new hearing with respect to all or any part of the subject-matter of the decision.

23.—(1) Subsection 35 (1) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Director”.

(2) Subsection 35 (2) of the said Act is repealed and the following substituted therefor:


When
Environ-
mental
Assessment
Board to
hold public
hearing

(2) Upon receipt of notice from the Director, the Environmental Assessment Board shall hold a public hearing with respect to the subject-matter of the notice.

(3) Subsection 35 (4) of the said Act is repealed.

(4) Subsection 35 (5) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Director”.

(5) Subsection 35 (6) of the said Act is repealed and the following substituted therefor:

(6) The Environmental Assessment Board may order that the by-law referred to in subsection (1) does not apply to the proposed waste disposal site and the by-law shall thereupon be deemed not to apply thereto.  Order

24. Clause 47a (2) (b) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is repealed and the following substituted therefor:

(b) that the continued operation of the vehicle will result or is likely to result in an adverse effect.

25.—(1) Subsection 47b (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is amended by striking out “any of the effects mentioned in subsection 47a (2)” in the last line and inserting in lieu thereof “an adverse effect”.

(2) Clause 47b (9) (b) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is amended by striking out “any of the effects mentioned in subsection 47a (2)” in the last line and inserting in lieu thereof “an adverse effect”.

26. Subsection 68 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 11, is further amended by striking out “deposit, addition, emission or” in the third last and second last lines.

27. The heading to Part VIII of the said Act is repealed and the following substituted therefor:

LITTER, PACKAGING AND CONTAINERS

28. Clause 79 (1) (b) of the said Act is repealed.

29.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant that causes or is likely to cause an adverse effect shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto, Notice to
Ministry and
others

(a) the Ministry;

- (b) the municipality or, if the spill occurred within the boundaries of a regional municipality, the regional municipality within the boundaries of which the spill occurred;
- (c) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and
- (d) where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant.

(2) Subsection 80 (2) of the said Act is amended by striking out “adverse effects” in the fifth and sixth lines and inserting in lieu thereof “an adverse effect”.

30.—(1) Subsection 81 (1) of the said Act is amended by striking out “adverse effects” in the third line and inserting in lieu thereof “an adverse effect” and by striking out “effects” in the fifth line and inserting in lieu thereof “effect”.

(2) Subsection 81 (2) of the said Act is amended by striking out “adverse effects” in the last line and inserting in lieu thereof “an adverse effect”.

31.—(1) Subsection 82 (1) of the said Act is amended by striking out “adverse effects” in the second and third lines and inserting in lieu thereof “an adverse effect”.

(2) Subsection 82 (3) of the said Act is amended by striking out “effects” in the fifth line and inserting in lieu thereof “effect”.

32. Section 83 of the said Act is repealed and the following substituted therefor:

Entry and
removal

83.—(1) For the purpose of carrying out any duty imposed or order or direction made or given under this Part, any person subject to the duty or to whom the order or direction is made or given and that person’s employees and agents may,

- (a) enter any place;
- (b) construct structures and use machinery, structures, materials and equipment therein or thereon; and

- (c) remove therefrom the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant.

(2) The rights set out in subsection (1) may be enforced by application without notice to a judge of the Supreme Court or a local judge of the High Court by a person, employee or agent referred to in subsection (1).

Enforcement
of right of
entry, etc.

(3) Where the judge or local judge is satisfied that there is reasonable ground for believing that it is necessary to do anything mentioned in subsection (1), the judge or local judge may issue an order authorizing the person and the person's employees and agents or any one or more of them to do anything mentioned in subsection (1) and specified in the order.

Order by
judge

(4) An order under subsection (3) shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

33. Subsection 85 (1) of the said Act is amended by striking out "are or are likely to be adverse effects" in the second and third lines and inserting in lieu thereof "is or is likely to be an adverse effect".

34.—(1) Subclause 87 (2) (a) (i) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

(2) Subclause 87 (4) (b) (i) of the said Act is amended by striking out "effects" in the second line and inserting in lieu thereof "effect".

35. Subsection 88 (1) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

36. Subsection 89 (10) of the said Act is amended by striking out "discharged" in the seventh line and inserting in lieu thereof "released".

37. Subclause 91 (1) (a) (i) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

38. Subsection 98 (5) of the said Act is amended by striking out "discharged" in the seventh line and inserting in lieu thereof "released".

39.—(1) Clause 113 (1) (a) of the said Act is amended by striking out “addition, emission or” in the first and second lines.

(2) Clause 113 (1) (b) of the said Act is amended by striking out “addition, emission or” in the first line.

(3) Clause 113 (1) (c) of the said Act is amended by striking out “added, emitted or” in the third line.

(4) Clause 113 (1) (d) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 15, is further amended by striking out “addition, emission or” in the third line.

40. Section 117 of the said Act is amended by striking out “adding to, emitting or” in the fourth line.

41.—(1) Subsection 121 (2) of the said Act is amended by striking out “or” at the end of clause (b), by inserting “or” at the end of clause (c) and by adding thereto the following clause:

(d) imposes new terms and conditions to a certificate of approval,

.

(2) Section 121 of the said Act is amended by adding thereto the following subsection:

Exception

(3) Subsections (1) and (2) do not apply with respect to a decision of the Environmental Assessment Board that is implemented by the Director in accordance with subsection 33 (4).

42. Section 126 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 9, is repealed and the following substituted therefor:

Inspection by
provincial
officer

126.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

(a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, elim-

inated or ameliorated and the natural environment restored;

- (b) entering any place in which the provincial officer reasonably believes can be found waste to which Part V applies;
- (c) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;
- (d) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations, or
 - (ii) the discharge of a contaminant into the natural environment;
- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a certificate of approval, provisional certificate of approval or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;

- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (h) entering any place where a motor, motor vehicle or beverage container regulated by or under this Act is stocked, displayed, sold or offered for sale to carry out his or her duties under Part III or VIII, as the case may be;
- (i) entering any establishment for the repair of motors or motor vehicles, to carry out his or her duties under Part III;
- (j) entering any ice shelter to carry out his or her duties under Part IV;
- (k) entering any abandoned motor vehicle to carry out his or her duties under Part VI;
- (l) entering any place where the provincial officer reasonably believes the permit and plates of a vehicle may be found in order to seize them in accordance with section 47a or 47b;
- (m) where a pollutant as defined in Part IX is spilled and is likely to cause an adverse effect, entering any place for the purpose of carrying out any duty imposed or order or direction made or given under that Part;
- (n) making necessary excavations;
- (o) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (p) taking samples;
- (q) recording or copying any information by any method;
- (r) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (s) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (r) for the purpose of making

copies or extracts and promptly returning them to the person who produced them; and

- (t) making reasonable inquiries of any person, orally or in writing.

(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such. Requirement to stop

(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection. Identification of provincial officers

(4) A provincial officer who exercises the power set out in clause (1) (t) may exclude from the questioning any person except counsel for the individual being questioned. Power to exclude persons

(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 127. Entry to dwellings

(6) A provincial officer who exercises any power set out in subsection (1) or 126a (1) may, if the provincial officer is designated as such under the *Ontario Water Resources Act* or the *Pesticides Act*, as the case may be, do anything authorized by, Power to administer other statutes
R.S.O. 1980,
cc. 361, 376

- (a) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*; or

- (b) subsection 19 (1) of the *Pesticides Act*.

126a.—(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by, Detention or removal

- (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
- (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

Limitation

(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 127.

Idem

(3) Subsection 126 (3) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1).

43.—(1) Subsection 127 (1) of the said Act is repealed and the following substituted therefor:

Entry or
inspection
order

(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 126 (1) (a) to (s) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 126 (1) (a) to (s) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 126 (1) (a) to (s) and specified in the order for the period of time set out in the order.

(2) Subsections 127 (1a), (1b) and (1c) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 20, are repealed and the following substituted therefor:

(1a) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 126a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

Detention or
removal
order

(3) Subsection 127 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 20, is repealed and the following substituted therefor:

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (1a) before or after expiry for one or more periods each of which is not more than thirty days.

Renewal

(2a) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

(2b) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.

When notice
not required

(2c) An order under this section for a reason mentioned in subsection (1a) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.

When notice
required

44. The said Act is amended by adding thereto the following sections:

127a. A provincial officer may detain samples and copies obtained under section 126 or 127 for any period and for any of the purposes of this Act and the regulations.

Samples and
copies

127b.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 126 or 127 if the provincial officer reasonably believes that there has been a contravention of this Act or the regu-

Seizure

lations and that the thing will afford evidence of the contravention.

Possession

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Notice of reason for seizure

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Definition

127c.—(1) In this section, “offence” means an offence under this Act related to,

(a) the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect; or

(b) hazardous waste or hauled liquid industrial waste.

Search by provincial officer re actual pollution

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

(a) that an offence has been committed;

(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and

(c) that there are exigent circumstances that make it impractical to obtain a search warrant.

Seizure

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Receipt

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Report to justice

127d.—(1) A provincial officer who seizes any thing during an inspection or search under section 127b or 127c shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application of R.S.O. 1980, c. 400, ss. 143, 144

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 127b or 127c.

127e. A provincial officer may use such force as is reasonably necessary, Use of force

- (a) to carry out an order or direction issued under this Part or Part IX;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or R.S.O. 1980, c. 400
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

127f. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made. Restoration

127g. It is a condition of every licence, permit, certificate of approval or provisional certificate of approval under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 126, 126a or 127 of this Act, section 10, 10a or 10b of the *Ontario Water Resources Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates. Condition
R.S.O. 1980, cc. 361, 376

45.—(1) Clause 136 (1) (b) of the said Act is amended by striking out “depositing, addition, emission or” in the first and second lines.

(2) Subsection 136 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 23, is further amended by adding thereto the following clauses:

- (ab) requiring the filing of returns concerning any matter regulated by or under this Act;
-
- (la) requiring the payment of fees by applicants or any class of applicants for certificates of approval, and providing for refunds of the fees;
- (lb) prescribing the amounts or the method of calculating the amounts of the fees for certificates of approval, and prescribing minimum and maximum

amounts or the method of calculating the minimum and maximum amounts of the fees;

- (lc) respecting the payment to municipalities of the fees for certificates of approval and the retention of all or part of the fees by the municipalities;

.

- (o) requiring and regulating the storage, treatment and disposal of sewage in vessels and the equipment therefor, and prohibiting the use and installation of equipment for the storage, treatment or disposal of sewage in vessels unless the equipment and installation thereof conform to the regulations, and providing for and requiring the approval of the Director for any such equipment and prohibiting and regulating the discharge of sewage from such vessels;
- (p) regulating and controlling, for the purpose of preventing or reducing the pollution of any water or places located on or adjacent to any water where moorings are provided for vessels or where any services are provided for vessels or the occupants thereof, and regulating and governing persons providing such moorings or services;
- (q) defining sewage for the purposes of regulations made under clauses (o) and (p).

(3) Clause 136 (1) (n) of the said Act is amended by striking out “for” in the second line and in the third line.

(4) Clause 136 (2) (b) of the said Act is amended by striking out “emission” in the fourth line and inserting in lieu thereof “discharge”.

(5) Clause 136 (2) (c) of the said Act is amended by striking out “emission” in the fourth line and in the seventh line and inserting in lieu thereof in each instance “discharge”.

(6) Clause 136 (2) (d) of the said Act is repealed and the following substituted therefor:

- (d) prescribing the standards of emission into the natural environment of any contaminant with which any motor or motor vehicle or any class or type of motor or motor vehicle shall comply and providing for the testing and inspection of any such motor, motor vehicle, class or type.

(7) Clauses 136 (3) (a), (b) and (c) of the said Act are repealed.

(8) Clause 136 (6) (c) of the said Act is amended by inserting after “sale” where it appears the first time in the second line “advertising”.

(9) Subclause 136 (6) (c) (i) of the said Act is amended by inserting after “sale” where it appears the first time in the second line “advertising”.

(10) Clause 136 (6) (d) of the said Act is amended by inserting after “sale” where it appears the first time in the first line “stocking, display, advertising”.

(11) Clause 136 (6) (j) of the said Act is amended by inserting after “use” in the first line “advertising”.

(12) Subsection 136 (7) of the said Act is amended,

- (a) in clause (a), by striking out “89 (1)” in the second line and inserting in lieu thereof “88 (1)”;
- (b) in clause (b), by striking out “90 (1)” in the third line and inserting in lieu thereof “89 (1)”;
- (c) in clause (c), by striking out “90 (1)” in the second line and inserting in lieu thereof “89 (1)”;
- (d) in clause (d), by striking out “80 (2)” in the second line and inserting in lieu thereof “79 (2)”.

46. The said Act is further amended by adding thereto the following section:

141.—(1) In this section,

Definitions

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Service of
offence
notice or
summons

Employer

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Corporation
R.S.O. 1980,
c. 400

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons in respect of an offence under this Act on a corporation,

- (a) that is or is required to be the holder of a document mentioned in clause 126 (1) (e);
- (b) that is subject to a document mentioned in clause 126 (1) (e); or
- (c) that is or is required to be the holder of a generator registration document mentioned in Regulation 309 of Revised Regulations of Ontario, 1980.

Exception

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Permit holder
deemed
owner
R.S.O. 1980,
c. 198

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

47. The said Act is further amended by adding thereto the following section:

Presiding
judge

145a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act.

48. Clause 146b (a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 15, is amended by

striking out “Litter” in the second line and inserting in lieu thereof “Litter, Packaging and Containers”.

49.—(1) Subsection 147 (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4 and amended by the Statutes of Ontario, 1986, chapter 68, section 16, is repealed and the following substituted therefor:

(1) Where any person is convicted of an offence under this Act or under subsection 16 (1) of the *Ontario Water Resources Act* in respect of hauled liquid industrial waste or hazardous waste as designated in the regulations relating to Part V of this Act and the action or failure to act for which the person is convicted may result in an adverse effect, the person is, instead of the fine elsewhere provided for the offence, liable on conviction,

Penalty
where hauled
liquid
industrial
waste or
hazardous
waste
involved
R.S.O. 1980,
c. 361

- (a) for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$5,000 on a first conviction and not less than \$4,000 and not more than \$15,000 on each subsequent conviction;
- (b) to imprisonment for a term of not more than one year; or
- (c) to both such fine and imprisonment.

(2) Subsection 147 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 16, is amended by striking out “any of the effects mentioned in clauses (1) (a) to (h)” in the second and third lines and inserting in lieu thereof “an adverse effect”.

(3) Subsection 147 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 16, is amended by striking out “any of the effects mentioned in clauses (1) (a) to (h)” in the second and third lines and inserting in lieu thereof “an adverse effect”.

50. Subsection 147a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 17, is amended by striking out “deposit, addition, emission or” in the second and third lines and in the sixth line.

PART II

Ontario Water Resources Act

51. Section 1 of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 68, section 18, is further amended by re-lettering clause (ia) as (ib) and by adding thereto the following clauses:

(ia) "discharge", when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

.

(ja) "inspection" includes an audit, examination, survey, test and inquiry;

.

(oa) "person" includes a municipality;

(ob) "place" includes a building, structure, machine, vehicle or vessel;

.

(qa) "provincial officer" means a person who is designated under section 4;

.



(ta) "waters" means a well, lake, river, pond, spring, stream, reservoir, artificial watercourse, intermittent watercourse, ground water or other water or watercourse.



52. Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 51, section 1, is further amended by adding thereto the following subsections:

Provincial
officers

(3) The Minister may designate in writing one or more officers or employees of the Ministry or other persons as provincial officers for the purposes of this Act and the regulations.

Idem

1988, c. ...

(4) A person who is an agent of the Minister for the purposes of subsection 10 (1), as it existed immediately before section 52 of the *Environment Statute Law Amendment Act*,

1988 comes into force, shall be deemed to be designated under subsection (3) until the 30th day of June, 1989.

53. Section 6 of the said Act is repealed and the following substituted therefor:

- 6.**—(1) Upon receipt of a notice from a Director under subsection 25 (1), 26 (1) or 43 (4), the Environmental Assessment Board shall hold a hearing with respect to the subject-matter of the notice, unless subsection 6a (2) applies. Hearing before Environmental Assessment Board
- (2) The applicant, the Director and any other persons specified by the Environmental Assessment Board shall be parties to the hearing. Parties
- (3) Subsections 18 (16), (17) and (18) and sections 20 and 23 of the *Environmental Assessment Act* do not apply to a decision of the Environmental Assessment Board made in a hearing under this section. Application of R.S.O. 1980, c. 140
- (4) The Environmental Assessment Board shall serve notice of its decision, together with reasons therefor, on the parties to the hearing, and the Director shall implement the decision. Decision
- (5) The Environmental Assessment Board may award the costs of a hearing before it. Costs
- (6) The Environmental Assessment Board may order by whom and to whom the costs are to be paid. Payment
- (7) The Environmental Assessment Board may fix the amount of the costs awarded or direct that the amount be assessed and specify the scale according to which they are to be assessed and by whom they are to be assessed. Assessment
- (8) The amount of the costs awarded to a person who intervened in a hearing under this section shall be fixed or assessed without any deduction of an amount paid to the person by the Crown in respect of the hearing that is repayable to the Crown. Government funding not to reduce costs award
- 6a.**—(1) Where the Environmental Assessment Board has given notice of a hearing under this Act, any person objecting to the action proposed under subsection 25 (1) or 26 (1) or the order referred to in subsection 43 (2) may serve notice of the objection, together with the reasons in support of it, on the Board within fifteen days after the notice of hearing is given. Notice of objection

Hearing not
required

(2) If no objections are received within the fifteen days, or if the Environmental Assessment Board is of the opinion that the objections are insufficient, the Environmental Assessment Board is not required to hold a hearing.

Extension

(3) Where the Environmental Assessment Board considers it appropriate in the circumstances, it may extend the period provided under subsection (1) for serving an objection.

Appeal from
decision of
Environ-
mental
Assessment
Board

6b.—(1) A party to a proceeding under this Act before the Environmental Assessment Board may appeal from its decision,

- (a) on a question of law, to the Divisional Court;
- (b) on a question other than a question of law, to the Lieutenant Governor in Council.

Time to
appeal to
cabinet

(2) An appeal under clause (1) (b) shall be made in writing within thirty days after the appealing party receives the decision of the Environmental Assessment Board.

Powers of
Cabinet on
appeal

(3) In an appeal under clause (1) (b), the Lieutenant Governor in Council shall confirm, alter or revoke the decision or order of the Environmental Assessment Board, substitute for the decision of the Board such decision as it considers appropriate or, by notice in writing to the Environmental Assessment Board, require it to hold a new hearing with respect to all or any part of the subject-matter of the decision.

54.—(1) Clause 7 (1) (a) of the said Act is amended by striking out “municipalities and” in the third line.

(2) Clause 7 (1) (b) of the said Act is amended by striking out “municipalities and” in the third line.

(3) Subsection 7 (2) of the said Act is amended by striking out “municipalities or” in the third line.

55. The said Act is amended by adding thereto the following sections:

Order, etc.,
binds
successor or
assignee

9a.—(1) An order, approval, requirement, direction or report of a court, the Minister or a Director under this Act is binding upon the successor or assignee of the person to whom it is directed.

Record

(2) The Ministry shall maintain a record of orders, approvals, requirements, directions and reports issued under this Act.

(3) When an order, approval, requirement, direction or report has expired or is revoked or set aside, the Ministry shall include that fact in the record.

Record of
expiry,
revocation,
setting aside

(4) The Ministry shall, upon the request of any person, make a search of the records and inform the person making the request as to whether an order, approval, requirement, direction or report has been issued and shall permit inspection of it.

Search of
records

9b. In sections 10 to 10i, "adverse effect", "contaminant" and "natural environment" have the same meanings as in the *Environmental Protection Act*.

Definitions

R.S.O. 1980,
c. 141

56.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

Inspection by
provincial
officer

(a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, eliminated or ameliorated and the natural environment restored;

(b) entering any place to ascertain the quality or quantity of water, the reasons therefor, and how any impairment thereof may be prevented, eliminated or ameliorated;

(c) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;

(d) entering any place that the provincial officer reasonably believes is likely to contain documents related to,

(i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations, or

- (ii) the discharge of a contaminant into the natural environment;
- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;
- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (h) making necessary excavations;
- (i) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (j) taking samples;
- (k) recording or copying any information by any method;
- (l) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (m) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (l) for the purpose of making

copies or extracts and promptly returning them to the person who produced them; and

- (n) making reasonable inquiries of any person, orally or in writing.

(2) Section 10 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 22, is further amended by adding thereto the following subsections:

(3a) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such. Requirement to stop

(3b) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection. Identification of provincial officer

(3c) A provincial officer who exercises the power set out in clause (1) (n) may exclude from the questioning any person except counsel for the individual being questioned. Power to exclude persons

(3d) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 10b. Entry to dwellings

(3e) A provincial officer who exercises any power set out in subsection (1) or 10a (1) may, if the provincial officer is designated as such under the *Environmental Protection Act* or the *Pesticides Act*, as the case may be, do anything authorized by, Power to administer other statutes
R.S.O. 1980,
cc. 141, 376

(a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or

(b) subsection 19 (1) of the *Pesticides Act*.

57. The said Act is further amended by adding thereto the following sections:

10a.—(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by, Detention or removal

- (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
- (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

Limitation

(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 10b.

Idem

(3) Subsection 10 (3b) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1).

Entry or
inspection
order

10b.—(1) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a provincial officer that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 10 (1) (a) to (m) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 10 (1) (a) to (m);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 10 (1) (a) to (m);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 10 (1) (a) to (m) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 10 (1) (a) to (m) and specified in the order for the period of time set out in the order.

(2) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 10a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

Detention or
removal
order

(3) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (2) before or after expiry for one or more periods each of which is not more than thirty days.

Renewal

(4) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

(5) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.

When notice
not required

(6) An order under this section for a reason mentioned in subsection (2) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.

When notice
required

10c. A provincial officer may detain samples and copies obtained under section 10 or 10b for any period and for any of the purposes of this Act and the regulations.

Samples and
copies

10d.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 10 or 10b if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.

Seizure

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Possession

Notice of
reason for
seizure

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Definition

10e.—(1) In this section, “offence” means an offence under this Act related to the discharge of any material that may impair the quality of the water of any water or water-course.

Search by
provincial
officer
re actual
pollution

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

- (a) that an offence has been committed;
- (b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
- (c) that there are exigent circumstances that make it impractical to obtain a search warrant.

Seizure

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Receipt

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Report to
justice

10f.—(1) A provincial officer who seizes any thing during an inspection or search under section 10d or 10e shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application
of
R.S.O. 1980,
c. 400,
ss. 143, 144

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 10d or 10e.

Use of force

10g. A provincial officer may use such force as is reasonably necessary,

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or

- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

10h. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made. Restoration

10i. It is a condition of every licence, permit, approval, requirement, direction, report, notice, agreement or order under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 10, 10a or 10b of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates. Condition

R.S.O. 1980,
cc. 141, 376

58. Section 11 of the said Act is amended by striking out “waters” in the fifth line and inserting in lieu thereof “water”. ▲

59. Section 14 of the said Act is amended by striking out “deposited or” in the fourth line and in the fifth line.

60. Subsection 15 (3) of the said Act is repealed and the following substituted therefor:

(3) Where any person is discharging or causing or permitting the discharge of any material of any kind into or in or near any waters that, in the opinion of the Minister, may impair the quality of the water in such waters, the Minister may apply without notice to a judge of the Supreme Court or of the District Court of the district in which the material is being discharged for an order prohibiting such discharge for such period not exceeding twenty-one days and on such terms and conditions as the judge considers proper, and such order may, on application to a judge of the Supreme Court or of the District Court of the district in which the material is being discharged, be continued for such period and on such terms and conditions as the judge considers proper.

Injunction to
prevent
pollution of
water

61. Section 16 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 23, is repealed and the following substituted therefor:

16.—(1) Every person that discharges or causes or permits the discharge of any material of any kind into or in any waters

Discharge of
polluting
material
prohibited

or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters is guilty of an offence.

Minister to be notified when polluting material is discharged or escapes

(2) Every person that discharges or causes or permits the discharge of any material of any kind, and such discharge is not in the normal course of events, or from whose control material of any kind escapes into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters, shall forthwith notify the Minister of the discharge or escape, as the case may be.

62. Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

Prohibiting or regulating discharge of sewage

(1) A Director may by order prohibit or regulate the discharge by any person of sewage into or in any waters, and such order may be amended, varied or revoked by the Director as the Director considers desirable.

63. Section 18 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 25, is repealed and the following substituted therefor:

Measures to alleviate effects of impairment of quality of water

18. Where, in the opinion of a Director, it is in the public interest to do so, the Director, by order, may require a person who owns, manages or has control of a sewage works, water works or other facility which may discharge material into a water or watercourse that may impair the quality of the water, to do any one or more of the following:

1. To have available at all times, or during the periods specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order to prevent, reduce or alleviate any impairment of the quality of the water or the effects of any impairment of the quality of the water.
2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
3. To implement the procedures specified in the order.
4. To take all steps necessary to ensure that the procedures specified in the order will be implemented in the event that a water or watercourse becomes impaired or may become impaired.

5. To monitor and record the quality and quantity of any water specified in the order and to report thereon to the Director.
6. To study and to report to the Director upon,
 - i. measures to control the discharge into a water or watercourse of a material specified in the order,
 - ii. the effects of the discharge into a water or watercourse of a material specified in the order,
 - iii. the water or watercourse into which a material specified in the order may be discharged.

64.—(1) Clause 19 (1) (b) of the said Act is amended by striking out “deposited” in the third line.

(2) Subsection 19 (1) of the said Act is amended by striking out “municipality or” in the eleventh line.

(3) Clause 19 (2) (b) of the said Act is amended by striking out “deposits” in the first line.

65.—(1) Subsection 23 (1) of the said Act is repealed and the following substituted therefor:

(1) No person shall establish, alter, extend or replace new or existing water works except under and in accordance with an approval granted by a Director.

Approval of
Director for
water works

(2) The Director may require an applicant for an approval under subsection (1) to submit plans, specifications, engineer's report and other information and to carry out and report on tests or experiments relating to the water supply or the work to be undertaken and, subject to subsection (4), the Director may grant the approval.

Director may
require
information

(2) Subsection 23 (4) of the said Act is repealed and the following substituted therefor:

(4) If, in the opinion of a Director, it is in the public interest to do so, the Director may,

Approval
may be
subject to
conditions,
etc.

- (a) refuse to grant the approval;
- (b) grant the approval on such terms and conditions as the Director considers necessary;

- (c) impose new terms and conditions to the approval;
- (d) alter the terms and conditions of the approval; or
- (e) revoke or suspend the approval.

(3) Subsection 23 (5) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed.

(4) Subsection 23 (6) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed and the following substituted therefor:

Returns from
water works

(6) The owner of water works shall make returns to a Director of the matters and within the time specified by the Director in a direction to the owner.

(5) Subsection 23 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed and the following substituted therefor:

No use or
operation
without
approval

(8) No person shall use or operate water works for which an approval is required under subsection (1) unless the required approval has been granted and complied with.

66.—(1) Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

Approval of
Director

(1) No person shall establish, alter, extend or replace new or existing sewage works except under and in accordance with an approval granted by a Director.

Director may
require
information

(2) A Director may require an applicant for an approval under subsection (1) to submit plans, specifications, engineer's report and other information and to carry out and report on tests or experiments relating to the location of the discharge of effluent or the work to be undertaken and, subject to subsection (4), the Director may grant the approval.

(2) Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

Certificate of
approval may
be subject to
conditions,
etc.

(4) If, in the opinion of a Director, it is in the public interest to do so, the Director may, subject to subsections 25 (1) and 26 (1),

- (a) refuse to grant the approval;
- (b) grant the approval on such terms and conditions as the Director considers necessary;

- (c) impose new terms and conditions to the approval;
- (d) alter the terms and conditions of the approval; or
- (e) revoke or suspend the approval.

(3) Subsection 24 (5) of said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 30, is repealed and the following substituted therefor:

(5) No person shall use or operate sewage works for which an approval is required under subsection (1) unless the required approval has been granted and complied with.

No use or
operation
without
approval

67.—(1) Subsection 25 (1) of the said Act is repealed and the following substituted therefor:

(1) Before taking any action under subsection 24 (4) with respect to a sewage works established or extended or to be established or extended by a municipality in or into another municipality or territory without municipal organization, a Director shall, by a notice in writing, require the Environmental Assessment Board to hold a hearing.

Sewage
works
established or
extended in
or into
another
municipality

(1a) The Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of the municipality in or into which the sewage works are being or have been established or extended and to clerks of such other municipalities and to such other persons and in such manner as the Environmental Assessment Board considers appropriate.

Notice of
hearing

(1b) The notice of hearing shall state that a hearing is not required to be held if no objections are made in accordance with subsection 6a (1).

Contents of
notice

(2) Subsection 25 (3) of the said Act is repealed.

(3) Subsection 25 (10) of the said Act is amended by inserting after “person” in the second line “other than a municipality”.

68.—(1) Subsection 26 (1) of the said Act is repealed and the following substituted therefor:

(1) Before taking any action under subsection 24 (4) with respect to a sewage works established or extended or to be established or extended by a person within a single municipality, a Director may, by a notice in writing, require the Environmental Assessment Board to hold a hearing.

Sewage
works
established or
extended
within a
municipality

Notice of
hearing

(1a) Where a hearing is to be held, the Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of the municipality and to such other persons and in such manner as the Environmental Assessment Board considers appropriate.

Contents of
notice

(1b) The notice of hearing shall state that a hearing is not required to be held if no objections are made in accordance with subsection 6a (1).

(2) Subsection 26 (2) of the said Act is repealed.

(3) Subsection 26 (3) of the said Act is amended by inserting after "person" in the second line "other than a municipality".

69. Section 30 of the said Act is repealed and the following substituted therefor:

Construction
or operation
of approved
sewage works
by statutory
authority
R.S.O. 1980,
c. 141

30. Sewage works that are being or have been constructed, maintained or operated in compliance with this Act, the *Environmental Protection Act* and the regulations under both Acts and with any order, direction or approval issued under the authority of this Act or any predecessor of any provision of this Act shall be deemed to be under construction, constructed, maintained or operated by statutory authority.

70. Section 31 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 31, is repealed and the following substituted therefor:

Returns from
sewage works

31. The owner of sewage works shall make returns to a Director of the matters and within the time specified by the Director in a direction to the owner.

71. Subsection 32 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 32, is repealed.

72. Subsection 33 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 33, is repealed.

73. Subsection 34 (6) of the said Act is amended by striking out "discharged" in the last line and inserting in lieu thereof "fulfilled".

74. Section 42a of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 51, section 2, is amended by striking out "municipality or other" in the first line.

75.—(1) Subsection 43 (4) of the said Act is repealed and the following substituted therefor:

(4) A Director shall, before making an order under subsection (2), require the Environmental Assessment Board, by a notice in writing, to hold a hearing. Hearing

(4a) The Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of each municipality affected by the proposed order and to such persons and in such manner as the Environmental Assessment Board considers appropriate. Notice

(4b) The notice of hearing shall state that a hearing is not required to be held if no objections to the establishment or extension are made in accordance with subsection 6a (1). Contents of notice

(2) Subsection 43 (6) of the said Act is amended by inserting after "every" where it appears the second time in the third line "other".

(3) Subsection 43 (13) of the said Act is amended by striking out "municipality or" in the first line and by striking out "municipality and" in the thirteenth and fourteenth lines.

76.—(1) Subsection 44 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 50, section 2, 1983, chapter 51, section 3 and 1986, chapter 68, section 35, is further amended by striking out "Subject to the approval of the Lieutenant Governor in Council, the Minister" in the first and second lines and inserting in lieu thereof "The Lieutenant Governor in Council".

(2) The said subsection 44 (1) is further amended by adding thereto the following clauses:

- (aa) requiring a person who owns, is in occupation or has the charge, management or control of a source of sewage to monitor, record and report on the sources of sewage including, but not limited to, materials and methods of production used and intended to be used, the wastes and sewage that will or are likely to be generated, the water or water-course, water works, sewage works or plumbing that may be affected by the discharge of the sewage, and to perform and report to the Director on research respecting methods of reducing or preventing the generation of wastes and sewage from the sources of sewage;
-

- (ja) requiring the payment of fees by applicants or classes of applicants for approvals under section 23 and section 24, and providing for refunds of the fees;
- (jb) prescribing the amounts or the method of calculating the amounts of the fees for approvals, and prescribing minimum and maximum amounts or the method of calculating the minimum and maximum amounts of the fees;
- (jc) respecting the payment to municipalities of the fees for approvals and the retention of all or part of the fees by the municipalities.

(3) Clause 44 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) adopting by reference, in whole or in part, with or without changes, the standards made or adopted by the Canadian Standards Association respecting pipes, fittings, fixtures and materials used in plumbing, and providing for the testing and marking of such pipes, fittings, fixtures and materials or any class or classes thereof by an organization accredited by the Standards Council of Canada for that purpose, and prohibiting the use in plumbing of pipes, fittings, fixtures and materials that are not marked as approved by an organization accredited by the Standards Council of Canada for that purpose; and

77. Section 49 of the said Act is repealed.

78. The said Act is further amended by adding thereto the following section:

Definitions

49a.—(1) In this section,

R.S.O. 1980,
c. 198

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 400

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

Service of
offence
notice or
summons

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be

deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle. Employer

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons in respect of an offence under this Act on a corporation that is or is required to be the holder of or is subject to a document mentioned in clause 126 (1) (e) of the *Environmental Protection Act*. Corporation
R.S.O. 1980,
cc. 400, 141

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle. Exception

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed. Permit holder
deemed
owner
R.S.O. 1980,
c. 198

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit. Application
of subs. (6)

79.—(1) Subsection 51 (1) of the said Act is amended by inserting after “by” in the last line “order of”.

(2) Subsection 51 (2) of the said Act is amended by inserting after “by” in the last line “order of”.

80. Section 52 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 38, is repealed and the following substituted therefor:

52. If, in the opinion of a Director, a discharge of sewage into a sewage works may interfere with the proper operation of a sewage works, the Director may by order require the per- Discharge of
sewage into
sewage works

son that discharges or causes or permits the discharge of sewage,

- (a) to stop or regulate such discharge; or
- (b) to take action in accordance with and within the time required by the order.

81.—(1) Subsection 61 (1) of the said Act is amended by striking out “or municipality” in the fourth line and in the eighth line.

(2) Subsection 61 (2) of the said Act is repealed and the following substituted therefor:

When
approval,
etc., refused

(2) When a Director,

- (a) refuses to issue or renew, or cancels or suspends a licence or permit, or refuses to grant an approval;
- (b) imposes terms and conditions in issuing a licence or permit or in granting an approval;
- (c) alters the terms and conditions of a permit or approval after it is issued or granted;
- (d) imposes new terms and conditions on a permit or approval after it is issued or granted; or
- (e) gives or makes any notice, direction, report or order, except an order under section 43,

the Director shall serve written notice of the refusal, cancellation or suspension referred to in clause (a), the terms and conditions imposed or altered as referred to in clause (b), (c) or (d), or a written copy of the notice, direction, report or order referred to in clause (e), and written reasons therefor, upon the applicant or the person to whom the licence, permit, approval, direction, order, report or notice is issued or granted.

Hearing may
be required

(2a) The applicant or person may, by written notice served upon the Director and the Environmental Appeal Board within fifteen days after the service of the notice referred to in subsection (2), require a hearing by the Environmental Appeal Board.

Exception

(2b) Subsections (2) and (2a) do not apply with respect to a decision of the Environmental Assessment Board that is

implemented by a Director in accordance with subsection 6 (4).

(3) Subsection 61 (4) of the said Act is amended by striking out “applicant, person or municipality” in the first line and inserting in lieu thereof “applicant or person”.

82. The said Act is further amended by adding thereto the following sections:

65a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act. Presiding judge

65b.—(1) Any notice, requirement, direction, order, report, decision or other document required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry. Service

(2) Where service is made by registered mail, the service shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person’s control receive the document until a later date. When service deemed made

83. Subsection 67 (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out “municipality or other” in the first line.

84. Subsection 68 (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out “municipality or other” in the first line.

85. Section 69 of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is repealed and the following substituted therefor:

69. For the purposes of determining the penalty to which a person is liable under section 67 or 68, a conviction for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under, Subsequent conviction

- (a) this Act, other than an offence related to subsection 44 (2) or sections 45 to 48;

R.S.O. 1980,
c. 141

- (b) the *Environmental Protection Act*, other than for an offence related to Part VII or Part VIII; or

R.S.O. 1980,
c. 376

- (c) the *Pesticides Act*.

86. Section 73 of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out “municipality or other” in the third line and in the last line.



87. Subsection 75 (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 42, is repealed and the following substituted therefor:

Duty of
director or
officer

(1) Every director or officer of a corporation that engages in an activity that may result in the discharge of any material into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge.



88. The said Act is further amended by striking out “municipality or” in each instance where it occurs,

- (a) in section 28, clause 43 (2) (c), subsections 43 (3), 43 (8), 43 (9), 44 (1) and sections 55 and 60; and

- (b) in the following provisions:

1. Subsection 56 (2), as enacted by the Statutes of Ontario, 1986, chapter 68, section 39.
2. Subsections 66 (1), 66 (2), 66 (3), 71 (1), 71 (2) and 71 (3), as enacted by the Statutes of Ontario, 1986, chapter 68, section 41.

PART III

Pesticides Act

89. Subsection 1 (1) of the *Pesticides Act*, being chapter 376 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 68, section 43, is further amended by re-lettering clause (ca) as (cb) and by adding thereto the following clauses:

- (ca) “discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

.

- (ga) “inspection” includes an audit, examination, survey, test and inquiry;

.

- (ta) “place” includes a building, structure, machine, vehicle or vessel.

20. Section 4 of the said Act is amended by striking out “deposit, add, emit or” in the third line and by striking out “deposit, addition, emission or” in the fourth line.

21. Section 12 of the said Act is repealed and the following substituted therefor:

12. A licence issued before or after section 91 of the *Environment Statute Law Amendment Act, 1988* comes into force expires as prescribed by the regulations.

Term of
licence
1988, c. ...

22. Subsections 17 (2) and (3) of the said Act are repealed.

23. Section 19 of the said Act is repealed and the following substituted therefor:

19.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

Inspection by
provincial
officer

- (a) entering any place in which the provincial officer reasonably believes a pesticide can be found;
- (b) entering any place in or from which the provincial officer reasonably believes a pesticide is being, has been or may be discharged into the environment;
- (c) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence or order under this Act or the regulations, or

- (ii) the discharge of a pesticide into the environment;
- (d) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence or order under this Act or the regulations;
- (e) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is or is required to be subject to or referred to in a permit, licence or order under this Act or the regulations,
 - (ii) contains a pesticide, or
 - (iii) is being or may be used in the performance of an extermination;
- (f) entering any place where a pesticide is stocked, displayed, sold or offered for sale;
- (g) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (h) taking samples;
- (i) recording or copying any information by any method;
- (j) requiring the production of any document that is required to be kept under this Act or the regulations and any other document that is related to the purposes of the inspection;
- (k) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (j) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and
- (l) making reasonable inquiries of any person, orally or in writing.

Requirement
to stop

(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.

(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.

Identification
of provincial
officers

(4) A provincial officer who exercises the power set out in clause (1) (l) may exclude from the questioning any person except counsel for the individual being questioned.

Power to
exclude
persons

(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 19a.

Entry to
dwellings

(6) A provincial officer who exercises any power set out in subsection (1) may, if the provincial officer is designated as such under the *Environmental Protection Act* or the *Ontario Water Resources Act*, as the case may be, do anything authorized by,

Power to
administer
other statutes
R.S.O. 1980,
cc. 141, 361

- (a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or
- (b) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*.

19a.—(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 19 (1) (a) to (k) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

Inspection
order

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order

under this section without delay if access is denied;
or

- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 19 (1) (a) to (k) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 19 (1) (a) to (k) and specified in the order for the period of time set out in the order.

Renewal

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) before or after expiry for one or more periods each of which is not more than thirty days.

When to be executed

(3) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

Notice not required

(4) An order under this section may be issued or renewed upon application without notice.

Samples and copies

19b. A provincial officer may detain samples and copies obtained under section 19 or 19a for any period and for any of the purposes of this Act and the regulations.

Seizure

19c.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under this Act if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.

Possession

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Notice of reason for seizure

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Definition

19d.—(1) In this section, “offence” means an offence under section 4, 6 or 7.

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

Search by provincial officer re actual pollution

- (a) that an offence has been committed;
- (b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
- (c) that there are exigent circumstances that make it impractical to obtain a search warrant.

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Seizure

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Receipt

19e.—(1) A provincial officer who seizes any thing during an inspection or search under section 19c or 19d shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Report to justice

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 19c or 19d.

Application of R.S.O. 1980, c. 400, ss. 143, 144

19f. A provincial officer may use such force as is reasonably necessary,

Use of force

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act.

19g. It is a condition of every permit or licence under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 19 or 19a of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 10, 10a or 10b of the *Ontario*

Condition

R.S.O. 1980, cc. 141, 361

Water Resources Act of any place, other than any room actually used as a dwelling, to which the permit or licence relates.



94.—(1) Section 20 of the said Act is amended by adding thereto the following subsection:

Public notice

(3a) The Director shall give notice of the stop order or the varied or confirmed stop order, together with written reasons therefor, to the municipality in which the emergency exists and to the public in such manner as the Director considers appropriate.

(2) Subsection 20 (10) of the said Act is amended by adding at the end thereof “and shall give notice of the rescinding order to the municipality referred to in subsection (3a) and to the public in such manner as the Director considers appropriate”.



95.—(1) Clause 21 (2) (a) of the said Act is amended by striking out “deposit, addition, emission or” in the first and second lines.

(2) Clause 21 (2) (b) of the said Act is amended by striking out “deposit, addition, emission or” in the first line.

96. Section 22 of the said Act is amended by striking out “deposits, adds, emits or” in the first line.

97. Subsection 23 (1) of the said Act is amended by striking out “deposits, adds, emits or” in the first line and by striking out “deposit, addition, emission or” in the second line.

98.—(1) Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

Order binds
successor or
assignee

(1) An order of a court, the Minister, Director or a provincial officer under this Act is binding upon the successor or assignee of the person to whom it is directed.

(2) Subsection 24 (3) of the said Act is amended by inserting after “rescinded” in the first line “or set aside”.

99. Section 28 of the said Act is amended by adding thereto the following paragraph:

3a. prescribing expiry dates or the method of determining the expiry dates of licences or any class of licences.

100. The said Act is amended by adding thereto the following section:

33a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act.

Presiding
judge

101. Section 35 of the said Act is repealed.

102. The said Act is further amended by adding thereto the following section:

35a.—(1) In this section,

Definitions

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Service of
offence
notice or
summons

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Employer

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons on a corporation that is or is required to be the holder of or is subject to a document mentioned in clause 19 (1) (d) in respect of an offence under this Act.

Corporation

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Exception

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to

Permit holder
deemed
owner

be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

Commence-
ment

103. This Act comes into force on the day it receives Royal Assent.

Short title

104. The short title of this Act is the *Environment Statute Law Amendment Act, 1988*.

Bill 148

*(Chapter 54
Statutes of Ontario, 1988)*

An Act to amend certain Acts respecting the Environment

The Hon. J. Bradley
Minister of the Environment

<i>1st Reading</i>	June 2nd, 1988
<i>2nd Reading</i>	June 21st, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 148**1988**

**An Act to amend
certain Acts respecting the Environment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

Environmental Protection Act

1.—(1) Clause 1 (1) (a) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1986, chapter 68, section 1, is amended by striking out “effects” in the first line and inserting in lieu thereof “effect”.

(2) Clause 1 (1) (c) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 1, is repealed and the following substituted therefor:

- (c) “contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.

(3) Clause 1 (1) (ca) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 1, is repealed and the following substituted therefor:

- (ca) “discharge”, when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak.

(4) Clause 1 (1) (l) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 1, is repealed and the following substituted therefor:

- (l) “person” includes a municipality as defined in this subsection.

(5) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 1 and 1986, chapter 68, section 1, is further amended by adding thereto the following clauses:

(da) "inspection" includes an audit, examination, survey, test and inquiry;

.

(ma) "place" includes a building, structure, machine, vehicle or vessel.

(6) Clause 1 (1) (p) of the said Act is amended by striking out "adds to, emits or" in the first and second lines.

2. Subsection 5 (1) of the said Act is amended by striking out "deposit in, add to, emit or" in the first line and by striking out "addition to, emission or" in the fourth line.

3.—(1) Section 6 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 3, is further amended by striking out "added to, emitted or" in the second and third lines.

(2) The said section 6 is further amended by adding thereto the following subsection:

Public notice

(2) The Director shall give notice of the control order to every municipality in which the contaminant is discharged and to the public in such manner as the Director considers appropriate.

4.—(1) Section 7 of the said Act is amended by striking out "adding to, emitting or" in the third line.

(2) The said section 7 is further amended by adding thereto the following subsection:

Public notice

(2) The Director shall give notice of the stop order to every municipality in which the contaminant is discharged and to the public in such manner as the Director considers appropriate.

5.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

Approval of
Director

(1) No person shall, except under and in accordance with a certificate of approval issued by the Director,

- (a) construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water; or
- (b) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural environment other than water or the rate or manner of discharge of a contaminant into any part of the natural environment other than water may be altered.

(2) Subsection 8 (2) of the said Act is amended by striking out "emission or" in the seventh line.

(3) Clause 8 (3) (c) of the said Act is repealed and the following substituted therefor:

- (c) any equipment, apparatus, mechanism or thing in or used in connection with a building or structure designed for the housing of not more than three families where the only contaminant produced by such equipment, apparatus, mechanism or thing is sound or vibration.

(4) Subsection 8 (4) of the said Act is repealed and the following substituted therefor:

(4) The Director may refuse to issue a certificate of approval or may issue a certificate of approval on such terms and conditions as the Director considers necessary, Powers of
Director

- (a) to ensure that any construction, alteration, extension, replacement, use or operation of a plant, structure, equipment, apparatus, mechanism or thing referred to in clause (1) (a) or that any alteration of a process or rate of production referred to in clause (1) (b) will result in compliance with this Act and the regulations and any order or approval hereunder; or
- (b) on probable grounds, to prevent or alleviate an adverse effect.

(5) The Director may,

Idem

- (a) alter any terms and conditions in a certificate of approval or impose new terms and conditions; or

(b) revoke or suspend a certificate of approval,

as the Director considers necessary for the reasons set out in clause (4) (a) or (b).

Exception

(6) A person to whom the Director has issued a certificate of approval under subsection (1) may make any changes in respect of which it is impractical to first obtain an amendment to the certificate if,

(a) the changes are not capable of increasing the potential for discharge of a contaminant into the natural environment; and

(b) the Director is notified in writing forthwith of the changes.

No use or operation without certificate of approval

(7) No person shall use or operate a plant, structure, equipment, apparatus, mechanism or thing for which a certificate of approval is required under clause (1) (a) unless the required certificate of approval has been issued and complied with.

6. Subsection 9 (1) of the said Act is amended by striking out "addition to, emission or" in the third line.

7. Section 10 of the said Act is amended by adding thereto the following subsections:

Amendment or revocation

(2) The Director may, by order, amend or revoke a program approval that was issued in error or that no longer adequately provides for the protection and conservation of the natural environment.

Amendment or revocation on consent

(3) The Director may, by order, amend or revoke a program approval with the consent of the person to whom the program approval is directed.

No hearing for amendment or revocation on consent

(4) Subsection 122 (1) does not entitle any person to a hearing in respect of an amendment or revocation of a program approval in accordance with a consent mentioned in subsection (3).

8. Section 11 of the said Act is amended by inserting after "approval" in the first line "or order".

9. Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

(1) Every person,

- (a) who discharges into the natural environment; or
- (b) who is the person responsible for a source of contaminant that discharges into the natural environment,

Ministry to be notified when contamination exceeds permitted level

any contaminant in an amount, concentration or level in excess of that prescribed by the regulations shall forthwith notify the Ministry of the discharge.

10. Section 13 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 4, is repealed and the following substituted therefor:

13.—(1) Notwithstanding any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect.

Prohibition

(2) Subsection (1) does not apply, in respect of an adverse effect referred to in subclause 1 (1) (a) (i), to animal wastes disposed of in accordance with normal farming practices.

Exception

11.—(1) Subsection 14 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 5, is repealed and the following substituted therefor:

(1) Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment out of the normal course of events that causes or is likely to cause an adverse effect shall forthwith notify the Ministry.

When Ministry to be notified

(2) Subsection 14 (3) of the said Act is repealed.

12. Section 16 of the said Act is amended by striking out “deposit, addition, emission or” in the first and second lines.

13. Subsection 17 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 52, section 6, is amended by adding thereto the following paragraphs:

- 5. To monitor and record the discharge into the natural environment of a contaminant specified in the order and to report thereon to the Director.
- 6. To study and to report to the Director upon,

- i. measures to control the discharge into the natural environment of a contaminant specified in the order,
- ii. the effects of the discharge into the natural environment of a contaminant specified in the order,
- iii. the natural environment into which a contaminant specified in the order is likely to be discharged.

14.—(1) Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

Order or
approval
binds
successor or
assignee

(1) An order or approval of a court, the Minister or the Director under this Act is binding upon the successor or assignee of the person to whom it is directed.

(2) Subsection 18 (3) of the said Act is amended by inserting after “revoked” in the first line “or set aside”.

15. Clause 20 (a) of the said Act is amended by adding at the end thereof “used in a vehicle”.

16.—(1) Subsection 21 (1) of the said Act is amended by striking out “offer or expose” in the first line and inserting in lieu thereof “or offer, expose or advertise”.

(2) Subsection 21 (2) of the said Act is amended by striking out “emission” in the third line and inserting in lieu thereof “discharge” and by striking out “offer or expose” in the fourth line and inserting in lieu thereof “or offer, expose or advertise”.

(3) Subsection 21 (3) of the said Act is amended by striking out “emission” in the third line and inserting in lieu thereof “discharge”.

17. Subsection 22 (2) of the said Act is amended by striking out “emission” in the third line and inserting in lieu thereof “discharge”.

18. Subsection 23 (2) of the said Act is repealed and the following substituted therefor:

Discharge of
waste
prohibited

(2) No person shall discharge or cause or permit the discharge of any waste on ice over any water except in accordance with the regulations.

19.—(1) Subsection 30 (1) of the said Act is amended by striking out “hold a public hearing” in the last line and inserting in lieu thereof “require the Environmental Assessment Board, by a notice in writing, to hold a hearing”.

(2) Subsection 30 (2) of the said Act is amended by striking out “Director” in the seventh line and inserting in lieu thereof “Environmental Assessment Board”.

20. Section 31 of the said Act is amended by striking out “holding a public hearing” in the last line and inserting in lieu thereof “requiring the Environmental Assessment Board to hold a hearing”.

21.—(1) Subsection 32 (1) of the said Act is amended by striking out “hold a public hearing” in the last line and inserting in lieu thereof “require the Environmental Assessment Board, by a notice in writing, to hold a hearing”.

(2) Subsection 32 (2) of the said Act is amended by striking out “Director” in the last line and inserting in lieu thereof “Environmental Assessment Board”.

22. Section 33 of the said Act is repealed and the following substituted therefor:

33.—(1) Upon receipt of a notice from the Director under section 30, 32 or 35, the Environmental Assessment Board shall hold a hearing with respect to the subject-matter of the notice.

Hearing
before
Environmental
Assessment
Board

(2) The applicant, the Director and any other persons specified by the Environmental Assessment Board shall be parties to the hearing.

Parties

(3) Subsections 18 (16), (17) and (18) and sections 20 and 23 of the *Environmental Assessment Act* do not apply to a decision of the Environmental Assessment Board made in a hearing under this section.

Application
of
R.S.O. 1980,
c. 140

(4) The Environmental Assessment Board shall serve notice of its decision, together with reasons therefor, on the parties to the hearing, and the Director shall implement the decision.

Decision

(5) The Environmental Assessment Board may award the costs of a hearing before it.

Costs

(6) The Environmental Assessment Board may order by whom and to whom the costs are to be paid.

Payment

Assessment

(7) The Environmental Assessment Board may fix the amount of the costs awarded or direct that the amount be assessed and specify the scale according to which they are to be assessed and by whom they are to be assessed.

Government
funding not
to reduce
costs award

(8) The amount of the costs awarded to a person who intervened in a hearing under this section shall be fixed or assessed without any deduction for an amount paid to the person by the Crown in respect of the hearing that is repayable to the Crown.

Appeal from
decision of
Environ-
mental
Assessment
Board

33a.—(1) A party to a proceeding under this Act before the Environmental Assessment Board may appeal from its decision,

(a) on a question of law, to the Divisional Court;

(b) on a question other than a question of law, to the Lieutenant Governor in Council.

Time to
appeal to
Cabinet

(2) An appeal under clause (1) (b) shall be made in writing within thirty days after the appealing party receives the decision of the Environmental Assessment Board.

Powers of
Cabinet on
appeal

(3) In an appeal under clause (1) (b), the Lieutenant Governor in Council shall confirm, alter or revoke the decision of the Environmental Assessment Board, substitute for the decision of the Board such decision as it considers appropriate or, by notice in writing to the Environmental Assessment Board, require it to hold a new hearing with respect to all or any part of the subject-matter of the decision.

23.—(1) Subsection 35 (1) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Director”.

(2) Subsection 35 (2) of the said Act is repealed and the following substituted therefor:

When
Environ-
mental
Assessment
Board to
hold public
hearing

(2) Upon receipt of notice from the Director, the Environmental Assessment Board shall hold a public hearing with respect to the subject-matter of the notice.

(3) Subsection 35 (4) of the said Act is repealed.

(4) Subsection 35 (5) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Director”.

(5) Subsection 35 (6) of the said Act is repealed and the following substituted therefor:

(6) The Environmental Assessment Board may order that the by-law referred to in subsection (1) does not apply to the proposed waste disposal site and the by-law shall thereupon be deemed not to apply thereto. Order

24. Clause 47a (2) (b) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is repealed and the following substituted therefor:

(b) that the continued operation of the vehicle will result or is likely to result in an adverse effect.

25.—(1) Subsection 47b (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is amended by striking out “any of the effects mentioned in subsection 47a (2)” in the last line and inserting in lieu thereof “an adverse effect”.

(2) Clause 47b (9) (b) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 2, is amended by striking out “any of the effects mentioned in subsection 47a (2)” in the last line and inserting in lieu thereof “an adverse effect”.

26. Subsection 68 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 11, is further amended by striking out “deposit, addition, emission or” in the third last and second last lines.

27. The heading to Part VIII of the said Act is repealed and the following substituted therefor:

LITTER, PACKAGING AND CONTAINERS

28. Clause 79 (1) (b) of the said Act is repealed.

29.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant that causes or is likely to cause an adverse effect shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto,

Notice to
Ministry and
others

(a) the Ministry;

- (b) the municipality or, if the spill occurred within the boundaries of a regional municipality, the regional municipality within the boundaries of which the spill occurred;
- (c) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and
- (d) where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant.

(2) Subsection 80 (2) of the said Act is amended by striking out “adverse effects” in the fifth and sixth lines and inserting in lieu thereof “an adverse effect”.

30.—(1) Subsection 81 (1) of the said Act is amended by striking out “adverse effects” in the third line and inserting in lieu thereof “an adverse effect” and by striking out “effects” in the fifth line and inserting in lieu thereof “effect”.

(2) Subsection 81 (2) of the said Act is amended by striking out “adverse effects” in the last line and inserting in lieu thereof “an adverse effect”.

31.—(1) Subsection 82 (1) of the said Act is amended by striking out “adverse effects” in the second and third lines and inserting in lieu thereof “an adverse effect”.

(2) Subsection 82 (3) of the said Act is amended by striking out “effects” in the fifth line and inserting in lieu thereof “effect”.

32. Section 83 of the said Act is repealed and the following substituted therefor:

83.—(1) For the purpose of carrying out any duty imposed or order or direction made or given under this Part, any person subject to the duty or to whom the order or direction is made or given and that person’s employees and agents may,

- (a) enter any place;
- (b) construct structures and use machinery, structures, materials and equipment therein or thereon; and

- (c) remove therefrom the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant.

(2) The rights set out in subsection (1) may be enforced by application without notice to a judge of the Supreme Court or a local judge of the High Court by a person, employee or agent referred to in subsection (1).

Enforcement
of right of
entry, etc.

(3) Where the judge or local judge is satisfied that there is reasonable ground for believing that it is necessary to do anything mentioned in subsection (1), the judge or local judge may issue an order authorizing the person and the person's employees and agents or any one or more of them to do anything mentioned in subsection (1) and specified in the order.

Order by
judge

(4) An order under subsection (3) shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

33. Subsection 85 (1) of the said Act is amended by striking out "are or are likely to be adverse effects" in the second and third lines and inserting in lieu thereof "is or is likely to be an adverse effect".

34.—(1) Subclause 87 (2) (a) (i) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

(2) Subclause 87 (4) (b) (i) of the said Act is amended by striking out "effects" in the second line and inserting in lieu thereof "effect".

35. Subsection 88 (1) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

36. Subsection 89 (10) of the said Act is amended by striking out "discharged" in the seventh line and inserting in lieu thereof "released".

37. Subclause 91 (1) (a) (i) of the said Act is amended by striking out "adverse effects" in the second line and inserting in lieu thereof "an adverse effect".

38. Subsection 98 (5) of the said Act is amended by striking out "discharged" in the seventh line and inserting in lieu thereof "released".

39.—(1) Clause 113 (1) (a) of the said Act is amended by striking out “addition, emission or” in the first and second lines.

(2) Clause 113 (1) (b) of the said Act is amended by striking out “addition, emission or” in the first line.

(3) Clause 113 (1) (c) of the said Act is amended by striking out “added, emitted or” in the third line.

(4) Clause 113 (1) (d) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 15, is further amended by striking out “addition, emission or” in the third line.

40. Section 117 of the said Act is amended by striking out “adding to, emitting or” in the fourth line.

41.—(1) Subsection 121 (2) of the said Act is amended by striking out “or” at the end of clause (b), by inserting “or” at the end of clause (c) and by adding thereto the following clause:

(d) imposes new terms and conditions to a certificate of approval,

(2) Section 121 of the said Act is amended by adding thereto the following subsection:

Exception

(3) Subsections (1) and (2) do not apply with respect to a decision of the Environmental Assessment Board that is implemented by the Director in accordance with subsection 33 (4).

42. Section 126 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 9, is repealed and the following substituted therefor:

Inspection by
provincial
officer

126.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

(a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, elim-

inated or ameliorated and the natural environment restored;

- (b) entering any place in which the provincial officer reasonably believes can be found waste to which Part V applies;
- (c) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;
- (d) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations, or
 - (ii) the discharge of a contaminant into the natural environment;
- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a certificate of approval, provisional certificate of approval or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;

- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (h) entering any place where a motor, motor vehicle or beverage container regulated by or under this Act is stocked, displayed, sold or offered for sale to carry out his or her duties under Part III or VIII, as the case may be;
- (i) entering any establishment for the repair of motors or motor vehicles, to carry out his or her duties under Part III;
- (j) entering any ice shelter to carry out his or her duties under Part IV;
- (k) entering any abandoned motor vehicle to carry out his or her duties under Part VI;
- (l) entering any place where the provincial officer reasonably believes the permit and plates of a vehicle may be found in order to seize them in accordance with section 47a or 47b;
- (m) where a pollutant as defined in Part IX is spilled and is likely to cause an adverse effect, entering any place for the purpose of carrying out any duty imposed or order or direction made or given under that Part;
- (n) making necessary excavations;
- (o) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (p) taking samples;
- (q) recording or copying any information by any method;
- (r) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (s) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (r) for the purpose of making

copies or extracts and promptly returning them to the person who produced them; and

- (t) making reasonable inquiries of any person, orally or in writing.

(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.

Requirement to stop

(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.

Identification of provincial officers

(4) A provincial officer who exercises the power set out in clause (1) (t) may exclude from the questioning any person except counsel for the individual being questioned.

Power to exclude persons

(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 127.

Entry to dwellings

(6) A provincial officer who exercises any power set out in subsection (1) or 126a (1) may, if the provincial officer is designated as such under the *Ontario Water Resources Act* or the *Pesticides Act*, as the case may be, do anything authorized by,

Power to administer other statutes
R.S.O. 1980,
cc. 361, 376

- (a) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*; or

- (b) subsection 19 (1) of the *Pesticides Act*.

126a.—(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by,

Detention or removal

- (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
- (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

Limitation

(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 127.

Idem

(3) Subsection 126 (3) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1).

43.—(1) Subsection 127 (1) of the said Act is repealed and the following substituted therefor:

Entry or
inspection
order

(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 126 (1) (a) to (s) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 126 (1) (a) to (s) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 126 (1) (a) to (s) and specified in the order for the period of time set out in the order.

(2) Subsections 127 (1a), (1b) and (1c) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 20, are repealed and the following substituted therefor:

(1a) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 126a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

Detention or
removal
order

(3) Subsection 127 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 20, is repealed and the following substituted therefor:

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (1a) before or after expiry for one or more periods each of which is not more than thirty days.

Renewal

(2a) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

(2b) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.

When notice
not required

(2c) An order under this section for a reason mentioned in subsection (1a) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.

When notice
required

44. The said Act is amended by adding thereto the following sections:

127a. A provincial officer may detain samples and copies obtained under section 126 or 127 for any period and for any of the purposes of this Act and the regulations.

Samples and
copies

127b.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 126 or 127 if the provincial officer reasonably believes that there has been a contravention of this Act or the regu-

Seizure

lations and that the thing will afford evidence of the contravention.

Possession

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Notice of
reason for
seizure

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Definition

127c.—(1) In this section, “offence” means an offence under this Act related to,

- (a) the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect; or
- (b) hazardous waste or hauled liquid industrial waste.

Search by
provincial
officer re
actual
pollution

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

- (a) that an offence has been committed;
- (b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
- (c) that there are exigent circumstances that make it impractical to obtain a search warrant.

Seizure

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Receipt

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Report to
justice

127d.—(1) A provincial officer who seizes any thing during an inspection or search under section 127b or 127c shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application
of
R.S.O. 1980,
c. 400,
ss. 143, 144

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 127b or 127c.

127e. A provincial officer may use such force as is reasonably necessary, Use of force

- (a) to carry out an order or direction issued under this Part or Part IX;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or R.S.O. 1980,
c. 400
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

127f. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made. Restoration

127g. It is a condition of every licence, permit, certificate of approval or provisional certificate of approval under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 126, 126a or 127 of this Act, section 10, 10a or 10b of the *Ontario Water Resources Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates. Condition

R.S.O. 1980,
cc. 361, 376

45.—(1) Clause 136 (1) (b) of the said Act is amended by striking out “depositing, addition, emission or” in the first and second lines.

(2) Subsection 136 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 23, is further amended by adding thereto the following clauses:

- (ab) requiring the filing of returns concerning any matter regulated by or under this Act;
-
- (la) requiring the payment of fees by applicants or any class of applicants for certificates of approval, and providing for refunds of the fees;
- (lb) prescribing the amounts or the method of calculating the amounts of the fees for certificates of approval, and prescribing minimum and maximum

amounts or the method of calculating the minimum and maximum amounts of the fees;

- (lc) respecting the payment to municipalities of the fees for certificates of approval and the retention of all or part of the fees by the municipalities;

.

- (o) requiring and regulating the storage, treatment and disposal of sewage in vessels and the equipment therefor, and prohibiting the use and installation of equipment for the storage, treatment or disposal of sewage in vessels unless the equipment and installation thereof conform to the regulations, and providing for and requiring the approval of the Director for any such equipment and prohibiting and regulating the discharge of sewage from such vessels;
- (p) regulating and controlling, for the purpose of preventing or reducing the pollution of any water or places located on or adjacent to any water where moorings are provided for vessels or where any services are provided for vessels or the occupants thereof, and regulating and governing persons providing such moorings or services;
- (q) defining sewage for the purposes of regulations made under clauses (o) and (p).

(3) Clause 136 (1) (n) of the said Act is amended by striking out “for” in the second line and in the third line.

(4) Clause 136 (2) (b) of the said Act is amended by striking out “emission” in the fourth line and inserting in lieu thereof “discharge”.

(5) Clause 136 (2) (c) of the said Act is amended by striking out “emission” in the fourth line and in the seventh line and inserting in lieu thereof in each instance “discharge”.

(6) Clause 136 (2) (d) of the said Act is repealed and the following substituted therefor:

- (d) prescribing the standards of emission into the natural environment of any contaminant with which any motor or motor vehicle or any class or type of motor or motor vehicle shall comply and providing for the testing and inspection of any such motor, motor vehicle, class or type.

(7) Clauses 136 (3) (a), (b) and (c) of the said Act are repealed.

(8) Clause 136 (6) (c) of the said Act is amended by inserting after "sale" where it appears the first time in the second line "advertising".

(9) Subclause 136 (6) (c) (i) of the said Act is amended by inserting after "sale" where it appears the first time in the second line "advertising".

(10) Clause 136 (6) (d) of the said Act is amended by inserting after "sale" where it appears the first time in the first line "stocking, display, advertising".

(11) Clause 136 (6) (j) of the said Act is amended by inserting after "use" in the first line "advertising".

(12) Subsection 136 (7) of the said Act is amended,

- (a) in clause (a), by striking out "89 (1)" in the second line and inserting in lieu thereof "88 (1)";
- (b) in clause (b), by striking out "90 (1)" in the third line and inserting in lieu thereof "89 (1)";
- (c) in clause (c), by striking out "90 (1)" in the second line and inserting in lieu thereof "89 (1)"; and
- (d) in clause (d), by striking out "80 (2)" in the second line and inserting in lieu thereof "79 (2)".

46. The said Act is further amended by adding thereto the following section:

141.—(1) In this section,

Definitions

"commercial motor vehicle" and "motor vehicle" have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

"offence notice or summons" means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Service of
offence
notice or
summons

Employer

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Corporation
R.S.O. 1980,
c. 400

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons in respect of an offence under this Act on a corporation,

- (a) that is or is required to be the holder of a document mentioned in clause 126 (1) (e);
- (b) that is subject to a document mentioned in clause 126 (1) (e); or
- (c) that is or is required to be the holder of a generator registration document mentioned in Regulation 309 of Revised Regulations of Ontario, 1980.

Exception

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Permit holder
deemed
owner
R.S.O. 1980,
c. 198

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

47. The said Act is further amended by adding thereto the following section:

Presiding
judge

145a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act.

48. Clause 146b (a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 15, is amended by

striking out “Litter” in the second line and inserting in lieu thereof “Litter, Packaging and Containers”.

49.—(1) Subsection 147 (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 49, section 4 and amended by the Statutes of Ontario, 1986, chapter 68, section 16, is repealed and the following substituted therefor:

(1) Where any person is convicted of an offence under this Act or under subsection 16 (1) of the *Ontario Water Resources Act* in respect of hauled liquid industrial waste or hazardous waste as designated in the regulations relating to Part V of this Act and the action or failure to act for which the person is convicted may result in an adverse effect, the person is, instead of the fine elsewhere provided for the offence, liable on conviction,

Penalty
where hauled
liquid
industrial
waste or
hazardous
waste
involved
R.S.O. 1980,
c. 361

- (a) for each day or part of a day on which the offence occurs or continues to a fine of not less than \$2,000 and not more than \$5,000 on a first conviction and not less than \$4,000 and not more than \$15,000 on each subsequent conviction;
- (b) to imprisonment for a term of not more than one year; or
- (c) to both such fine and imprisonment.

(2) Subsection 147 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 16, is amended by striking out “any of the effects mentioned in clauses (1) (a) to (h)” in the second and third lines and inserting in lieu thereof “an adverse effect”.

(3) Subsection 147 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 16, is amended by striking out “any of the effects mentioned in clauses (1) (a) to (h)” in the second and third lines and inserting in lieu thereof “an adverse effect”.

50. Subsection 147a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 17, is amended by striking out “deposit, addition, emission or” in the second and third lines and in the sixth line.

PART II

Ontario Water Resources Act

51. Section 1 of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 68, section 18, is further amended by re-lettering clause (ia) as (ib) and by adding thereto the following clauses:

(ia) “discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

.

(ja) “inspection” includes an audit, examination, survey, test and inquiry;

.

(oa) “person” includes a municipality;

(ob) “place” includes a building, structure, machine, vehicle or vessel;

.

(qa) “provincial officer” means a person who is designated under section 4;

.

(ta) “waters” means a well, lake, river, pond, spring, stream, reservoir, artificial watercourse, intermittent watercourse, ground water or other water or watercourse.

52. Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 51, section 1, is further amended by adding thereto the following subsections:

Provincial
officers

(3) The Minister may designate in writing one or more officers or employees of the Ministry or other persons as provincial officers for the purposes of this Act and the regulations.

Idem

(4) A person who is an agent of the Minister for the purposes of subsection 10 (1), as it existed immediately before section 52 of the *Environment Statute Law Amendment Act*,

1988 comes into force, shall be deemed to be designated under subsection (3) until the 30th day of June, 1989.

53. Section 6 of the said Act is repealed and the following substituted therefor:

6.—(1) Upon receipt of a notice from a Director under subsection 25 (1), 26 (1) or 43 (4), the Environmental Assessment Board shall hold a hearing with respect to the subject-matter of the notice, unless subsection 6a (2) applies.

Hearing
before
Environ-
mental
Assessment
Board

(2) The applicant, the Director and any other persons specified by the Environmental Assessment Board shall be parties to the hearing.

Parties

(3) Subsections 18 (16), (17) and (18) and sections 20 and 23 of the *Environmental Assessment Act* do not apply to a decision of the Environmental Assessment Board made in a hearing under this section.

Application
of
R.S.O. 1980,
c. 140

(4) The Environmental Assessment Board shall serve notice of its decision, together with reasons therefor, on the parties to the hearing, and the Director shall implement the decision.

Decision

(5) The Environmental Assessment Board may award the costs of a hearing before it.

Costs

(6) The Environmental Assessment Board may order by whom and to whom the costs are to be paid.

Payment

(7) The Environmental Assessment Board may fix the amount of the costs awarded or direct that the amount be assessed and specify the scale according to which they are to be assessed and by whom they are to be assessed.

Assessment

(8) The amount of the costs awarded to a person who intervened in a hearing under this section shall be fixed or assessed without any deduction of an amount paid to the person by the Crown in respect of the hearing that is repayable to the Crown.

Government
funding not
to reduce
costs award

6a.—(1) Where the Environmental Assessment Board has given notice of a hearing under this Act, any person objecting to the action proposed under subsection 25 (1) or 26 (1) or the order referred to in subsection 43 (2) may serve notice of the objection, together with the reasons in support of it, on the Board within fifteen days after the notice of hearing is given.

Notice of
objection

Hearing not
required

(2) If no objections are received within the fifteen days, or if the Environmental Assessment Board is of the opinion that the objections are insufficient, the Environmental Assessment Board is not required to hold a hearing.

Extension

(3) Where the Environmental Assessment Board considers it appropriate in the circumstances, it may extend the period provided under subsection (1) for serving an objection.

Appeal from
decision of
Environ-
mental
Assessment
Board

6b.—(1) A party to a proceeding under this Act before the Environmental Assessment Board may appeal from its decision,

- (a) on a question of law, to the Divisional Court;
- (b) on a question other than a question of law, to the Lieutenant Governor in Council.

Time to
appeal to
cabinet

(2) An appeal under clause (1) (b) shall be made in writing within thirty days after the appealing party receives the decision of the Environmental Assessment Board.

Powers of
Cabinet on
appeal

(3) In an appeal under clause (1) (b), the Lieutenant Governor in Council shall confirm, alter or revoke the decision or order of the Environmental Assessment Board, substitute for the decision of the Board such decision as it considers appropriate or, by notice in writing to the Environmental Assessment Board, require it to hold a new hearing with respect to all or any part of the subject-matter of the decision.

54.—(1) Clause 7 (1) (a) of the said Act is amended by striking out “municipalities and” in the third line.

(2) Clause 7 (1) (b) of the said Act is amended by striking out “municipalities and” in the third line.

(3) Subsection 7 (2) of the said Act is amended by striking out “municipalities or” in the third line.

55. The said Act is amended by adding thereto the following sections:

Order, etc.,
binds
successor or
assignee

9a.—(1) An order, approval, requirement, direction or report of a court, the Minister or a Director under this Act is binding upon the successor or assignee of the person to whom it is directed.

Record

(2) The Ministry shall maintain a record of orders, approvals, requirements, directions and reports issued under this Act.

(3) When an order, approval, requirement, direction or report has expired or is revoked or set aside, the Ministry shall include that fact in the record.

Record of
expiry,
revocation,
setting aside

(4) The Ministry shall, upon the request of any person, make a search of the records and inform the person making the request as to whether an order, approval, requirement, direction or report has been issued and shall permit inspection of it.

Search of
records

9b. In sections 10 to 10i, “adverse effect”, “contaminant” and “natural environment” have the same meanings as in the *Environmental Protection Act*.

Definitions

R.S.O. 1980,
c. 141

56.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

Inspection by
provincial
officer

- (a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, eliminated or ameliorated and the natural environment restored;
- (b) entering any place to ascertain the quality or quantity of water, the reasons therefor, and how any impairment thereof may be prevented, eliminated or ameliorated;
- (c) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;
- (d) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations, or

- (ii) the discharge of a contaminant into the natural environment;
- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;
- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (h) making necessary excavations;
- (i) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (j) taking samples;
- (k) recording or copying any information by any method;
- (l) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (m) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (l) for the purpose of making

copies or extracts and promptly returning them to the person who produced them; and

- (n) making reasonable inquiries of any person, orally or in writing.

(2) Section 10 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 22, is further amended by adding thereto the following subsections:

(3a) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such. Requirement to stop

(3b) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection. Identification of provincial officer

(3c) A provincial officer who exercises the power set out in clause (1) (n) may exclude from the questioning any person except counsel for the individual being questioned. Power to exclude persons

(3d) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 10b. Entry to dwellings

(3e) A provincial officer who exercises any power set out in subsection (1) or 10a (1) may, if the provincial officer is designated as such under the *Environmental Protection Act* or the *Pesticides Act*, as the case may be, do anything authorized by, Power to administer other statutes
R.S.O. 1980,
cc. 141, 376

- (a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or

- (b) subsection 19 (1) of the *Pesticides Act*.

57. The said Act is further amended by adding thereto the following sections:

10a.—(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by, Detention or removal

- (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
- (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

Limitation

(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 10b.

Idem

(3) Subsection 10 (3b) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1).

Entry or
inspection
order

10b.—(1) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a provincial officer that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 10 (1) (a) to (m) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 10 (1) (a) to (m);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 10 (1) (a) to (m);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 10 (1) (a) to (m) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 10 (1) (a) to (m) and specified in the order for the period of time set out in the order.

(2) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 10a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

Detention or
removal
order

(3) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (2) before or after expiry for one or more periods each of which is not more than thirty days.

Renewal

(4) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

(5) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.

When notice
not required

(6) An order under this section for a reason mentioned in subsection (2) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.

When notice
required

10c. A provincial officer may detain samples and copies obtained under section 10 or 10b for any period and for any of the purposes of this Act and the regulations.

Samples and
copies

10d.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 10 or 10b if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.

Seizure

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Possession

Notice of
reason for
seizure

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Definition

10e.—(1) In this section, “offence” means an offence under this Act related to the discharge of any material that may impair the quality of the water of any water or water-course.

Search by
provincial
officer
re actual
pollution

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

- (a) that an offence has been committed;
- (b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
- (c) that there are exigent circumstances that make it impractical to obtain a search warrant.

Seizure

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Receipt

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Report to
justice

10f.—(1) A provincial officer who seizes any thing during an inspection or search under section 10d or 10e shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application
of
R.S.O. 1980,
c. 400,
ss. 143, 144

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 10d or 10e.

Use of force

10g. A provincial officer may use such force as is reasonably necessary,

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or

- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

10h. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made. Restoration

10i. It is a condition of every licence, permit, approval, requirement, direction, report, notice, agreement or order under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 10, 10a or 10b of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates. Condition

R.S.O. 1980,
cc. 141, 376

58. Section 11 of the said Act is amended by striking out “waters” in the fifth line and inserting in lieu thereof “water”.

59. Section 14 of the said Act is amended by striking out “deposited or” in the fourth line and in the fifth line.

60. Subsection 15 (3) of the said Act is repealed and the following substituted therefor:

(3) Where any person is discharging or causing or permitting the discharge of any material of any kind into or in or near any waters that, in the opinion of the Minister, may impair the quality of the water in such waters, the Minister may apply without notice to a judge of the Supreme Court or of the District Court of the district in which the material is being discharged for an order prohibiting such discharge for such period not exceeding twenty-one days and on such terms and conditions as the judge considers proper, and such order may, on application to a judge of the Supreme Court or of the District Court of the district in which the material is being discharged, be continued for such period and on such terms and conditions as the judge considers proper. Injunction to
prevent
pollution of
water

61. Section 16 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 23, is repealed and the following substituted therefor:

16.—(1) Every person that discharges or causes or permits the discharge of any material of any kind into or in any waters Discharge of
polluting
material
prohibited

or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters is guilty of an offence.

Minister to be notified when polluting material is discharged or escapes

(2) Every person that discharges or causes or permits the discharge of any material of any kind, and such discharge is not in the normal course of events, or from whose control material of any kind escapes into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters, shall forthwith notify the Minister of the discharge or escape, as the case may be.

62. Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

Prohibiting or regulating discharge of sewage

(1) A Director may by order prohibit or regulate the discharge by any person of sewage into or in any waters, and such order may be amended, varied or revoked by the Director as the Director considers desirable.

63. Section 18 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 25, is repealed and the following substituted therefor:

Measures to alleviate effects of impairment of quality of water

18. Where, in the opinion of a Director, it is in the public interest to do so, the Director, by order, may require a person who owns, manages or has control of a sewage works, water works or other facility which may discharge material into a water or watercourse that may impair the quality of the water, to do any one or more of the following:

1. To have available at all times, or during the periods specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order to prevent, reduce or alleviate any impairment of the quality of the water or the effects of any impairment of the quality of the water.
2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
3. To implement the procedures specified in the order.
4. To take all steps necessary to ensure that the procedures specified in the order will be implemented in the event that a water or watercourse becomes impaired or may become impaired.

5. To monitor and record the quality and quantity of any water specified in the order and to report thereon to the Director.
6. To study and to report to the Director upon,
 - i. measures to control the discharge into a water or watercourse of a material specified in the order,
 - ii. the effects of the discharge into a water or watercourse of a material specified in the order,
 - iii. the water or watercourse into which a material specified in the order may be discharged.

64.—(1) Clause 19 (1) (b) of the said Act is amended by striking out “deposited” in the third line.

(2) Subsection 19 (1) of the said Act is amended by striking out “municipality or” in the eleventh line.

(3) Clause 19 (2) (b) of the said Act is amended by striking out “deposits” in the first line.

65.—(1) Subsection 23 (1) of the said Act is repealed and the following substituted therefor:

(1) No person shall establish, alter, extend or replace new or existing water works except under and in accordance with an approval granted by a Director.

Approval of
Director for
water works

(2) The Director may require an applicant for an approval under subsection (1) to submit plans, specifications, engineer's report and other information and to carry out and report on tests or experiments relating to the water supply or the work to be undertaken and, subject to subsection (4), the Director may grant the approval.

Director may
require
information

(2) Subsection 23 (4) of the said Act is repealed and the following substituted therefor:

(4) If, in the opinion of a Director, it is in the public interest to do so, the Director may,

Approval
may be
subject to
conditions,
etc.

- (a) refuse to grant the approval;
- (b) grant the approval on such terms and conditions as the Director considers necessary;

- (c) impose new terms and conditions to the approval;
- (d) alter the terms and conditions of the approval; or
- (e) revoke or suspend the approval.

(3) Subsection 23 (5) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed.

(4) Subsection 23 (6) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed and the following substituted therefor:

Returns from
water works

(6) The owner of water works shall make returns to a Director of the matters and within the time specified by the Director in a direction to the owner.

(5) Subsection 23 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 29, is repealed and the following substituted therefor:

No use or
operation
without
approval

(8) No person shall use or operate water works for which an approval is required under subsection (1) unless the required approval has been granted and complied with.

66.—(1) Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

Approval of
Director

(1) No person shall establish, alter, extend or replace new or existing sewage works except under and in accordance with an approval granted by a Director.

Director may
require
information

(2) A Director may require an applicant for an approval under subsection (1) to submit plans, specifications, engineer's report and other information and to carry out and report on tests or experiments relating to the location of the discharge of effluent or the work to be undertaken and, subject to subsection (4), the Director may grant the approval.

(2) Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

Certificate of
approval may
be subject to
conditions,
etc.

(4) If, in the opinion of a Director, it is in the public interest to do so, the Director may, subject to subsections 25 (1) and 26 (1),

- (a) refuse to grant the approval;
- (b) grant the approval on such terms and conditions as the Director considers necessary;

- (c) impose new terms and conditions to the approval;
- (d) alter the terms and conditions of the approval; or
- (e) revoke or suspend the approval.

(3) Subsection 24 (5) of said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 30, is repealed and the following substituted therefor:

(5) No person shall use or operate sewage works for which an approval is required under subsection (1) unless the required approval has been granted and complied with.

No use or operation without approval

67.—(1) Subsection 25 (1) of the said Act is repealed and the following substituted therefor:

(1) Before taking any action under subsection 24 (4) with respect to a sewage works established or extended or to be established or extended by a municipality in or into another municipality or territory without municipal organization, a Director shall, by a notice in writing, require the Environmental Assessment Board to hold a hearing.

Sewage works established or extended in or into another municipality

(1a) The Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of the municipality in or into which the sewage works are being or have been established or extended and to clerks of such other municipalities and to such other persons and in such manner as the Environmental Assessment Board considers appropriate.

Notice of hearing

(1b) The notice of hearing shall state that a hearing is not required to be held if no objections are made in accordance with subsection 6a (1).

Contents of notice

(2) Subsection 25 (3) of the said Act is repealed.

(3) Subsection 25 (10) of the said Act is amended by inserting after “person” in the second line “other than a municipality”.

68.—(1) Subsection 26 (1) of the said Act is repealed and the following substituted therefor:

(1) Before taking any action under subsection 24 (4) with respect to a sewage works established or extended or to be established or extended by a person within a single municipality, a Director may, by a notice in writing, require the Environmental Assessment Board to hold a hearing.

Sewage works established or extended within a municipality

Notice of
hearing

(1a) Where a hearing is to be held, the Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of the municipality and to such other persons and in such manner as the Environmental Assessment Board considers appropriate.

Contents of
notice

(1b) The notice of hearing shall state that a hearing is not required to be held if no objections are made in accordance with subsection 6a (1).

(2) Subsection 26 (2) of the said Act is repealed.

(3) Subsection 26 (3) of the said Act is amended by inserting after "person" in the second line "other than a municipality".

69. Section 30 of the said Act is repealed and the following substituted therefor:

Construction
or operation
of approved
sewage works
by statutory
authority
R.S.O. 1980,
c. 141

30. Sewage works that are being or have been constructed, maintained or operated in compliance with this Act, the *Environmental Protection Act* and the regulations under both Acts and with any order, direction or approval issued under the authority of this Act or any predecessor of any provision of this Act shall be deemed to be under construction, constructed, maintained or operated by statutory authority.

70. Section 31 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 31, is repealed and the following substituted therefor:

Returns from
sewage works

31. The owner of sewage works shall make returns to a Director of the matters and within the time specified by the Director in a direction to the owner.

71. Subsection 32 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 68, section 32, is repealed.

72. Subsection 33 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 33, is repealed.

73. Subsection 34 (6) of the said Act is amended by striking out "discharged" in the last line and inserting in lieu thereof "fulfilled".

74. Section 42a of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 51, section 2, is amended by striking out "municipality or other" in the first line.

75.—(1) Subsection 43 (4) of the said Act is repealed and the following substituted therefor:

(4) A Director shall, before making an order under subsection (2), require the Environmental Assessment Board, by a notice in writing, to hold a hearing. Hearing

(4a) The Environmental Assessment Board shall give at least fifteen days notice of the hearing to the clerk of each municipality affected by the proposed order and to such persons and in such manner as the Environmental Assessment Board considers appropriate. Notice

(4b) The notice of hearing shall state that a hearing is not required to be held if no objections to the establishment or extension are made in accordance with subsection 6a (1). Contents of notice

(2) Subsection 43 (6) of the said Act is amended by inserting after "every" where it appears the second time in the third line "other".

(3) Subsection 43 (13) of the said Act is amended by striking out "municipality or" in the first line and by striking out "municipality and" in the thirteenth and fourteenth lines.

76.—(1) Subsection 44 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 50, section 2, 1983, chapter 51, section 3 and 1986, chapter 68, section 35, is further amended by striking out "Subject to the approval of the Lieutenant Governor in Council, the Minister" in the first and second lines and inserting in lieu thereof "The Lieutenant Governor in Council".

(2) The said subsection 44 (1) is further amended by adding thereto the following clauses:

- (aa) requiring a person who owns, is in occupation or has the charge, management or control of a source of sewage to monitor, record and report on the sources of sewage including, but not limited to, materials and methods of production used and intended to be used, the wastes and sewage that will or are likely to be generated, the water or water-course, water works, sewage works or plumbing that may be affected by the discharge of the sewage, and to perform and report to the Director on research respecting methods of reducing or preventing the generation of wastes and sewage from the sources of sewage;
-

- (ja) requiring the payment of fees by applicants or classes of applicants for approvals under section 23 and section 24, and providing for refunds of the fees;
- (jb) prescribing the amounts or the method of calculating the amounts of the fees for approvals, and prescribing minimum and maximum amounts or the method of calculating the minimum and maximum amounts of the fees;
- (jc) respecting the payment to municipalities of the fees for approvals and the retention of all or part of the fees by the municipalities.

(3) Clause 44 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) adopting by reference, in whole or in part, with or without changes, the standards made or adopted by the Canadian Standards Association respecting pipes, fittings, fixtures and materials used in plumbing, and providing for the testing and marking of such pipes, fittings, fixtures and materials or any class or classes thereof by an organization accredited by the Standards Council of Canada for that purpose, and prohibiting the use in plumbing of pipes, fittings, fixtures and materials that are not marked as approved by an organization accredited by the Standards Council of Canada for that purpose; and

.

77. Section 49 of the said Act is repealed.

78. The said Act is further amended by adding thereto the following section:

Definitions

49a.—(1) In this section,

R.S.O. 1980,
c. 198

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 400

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

Service of
offence
notice or
summons

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be

deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle. Employer

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons in respect of an offence under this Act on a corporation that is or is required to be the holder of or is subject to a document mentioned in clause 126 (1) (e) of the *Environmental Protection Act*. Corporation
R.S.O. 1980,
cc. 400, 141

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle. Exception

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed. Permit holder
deemed
owner
R.S.O. 1980,
c. 198

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit. Application
of subs. (6)

79.—(1) Subsection 51 (1) of the said Act is amended by inserting after “by” in the last line “order of”.

(2) Subsection 51 (2) of the said Act is amended by inserting after “by” in the last line “order of”.

80. Section 52 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 68, section 38, is repealed and the following substituted therefor:

52. If, in the opinion of a Director, a discharge of sewage into a sewage works may interfere with the proper operation of a sewage works, the Director may by order require the per- Discharge of
sewage into
sewage works

son that discharges or causes or permits the discharge of sewage,

- (a) to stop or regulate such discharge; or
- (b) to take action in accordance with and within the time required by the order.

81.—(1) Subsection 61 (1) of the said Act is amended by striking out “or municipality” in the fourth line and in the eighth line.

(2) Subsection 61 (2) of the said Act is repealed and the following substituted therefor:

When
approval,
etc., refused

- (2) When a Director,
 - (a) refuses to issue or renew, or cancels or suspends a licence or permit, or refuses to grant an approval;
 - (b) imposes terms and conditions in issuing a licence or permit or in granting an approval;
 - (c) alters the terms and conditions of a permit or approval after it is issued or granted;
 - (d) imposes new terms and conditions on a permit or approval after it is issued or granted; or
 - (e) gives or makes any notice, direction, report or order, except an order under section 43,

the Director shall serve written notice of the refusal, cancellation or suspension referred to in clause (a), the terms and conditions imposed or altered as referred to in clause (b), (c) or (d), or a written copy of the notice, direction, report or order referred to in clause (e), and written reasons therefor, upon the applicant or the person to whom the licence, permit, approval, direction, order, report or notice is issued or granted.

Hearing may
be required

(2a) The applicant or person may, by written notice served upon the Director and the Environmental Appeal Board within fifteen days after the service of the notice referred to in subsection (2), require a hearing by the Environmental Appeal Board.

Exception

(2b) Subsections (2) and (2a) do not apply with respect to a decision of the Environmental Assessment Board that is

implemented by a Director in accordance with subsection 6 (4).

(3) Subsection 61 (4) of the said Act is amended by striking out “applicant, person or municipality” in the first line and inserting in lieu thereof “applicant or person”.

82. The said Act is further amended by adding thereto the following sections:

65a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act. Presiding judge

65b.—(1) Any notice, requirement, direction, order, report, decision or other document required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry. Service

(2) Where service is made by registered mail, the service shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the document until a later date. When service deemed made

83. Subsection 67 (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out “municipality or other” in the first line.

84. Subsection 68 (2) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out “municipality or other” in the first line.

85. Section 69 of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is repealed and the following substituted therefor:

69. For the purposes of determining the penalty to which a person is liable under section 67 or 68, a conviction for an offence under this Act is a subsequent conviction if the person has previously been convicted of an offence under, Subsequent conviction

- (a) this Act, other than an offence related to subsection 44 (2) or sections 45 to 48;

R.S.O. 1980,
c. 141

(b) the *Environmental Protection Act*, other than for an offence related to Part VII or Part VIII; or

R.S.O. 1980,
c. 376

(c) the *Pesticides Act*.

86. Section 73 of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 41, is amended by striking out “municipality or other” in the third line and in the last line.

87. Subsection 75 (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 68, section 42, is repealed and the following substituted therefor:

Duty of
director or
officer

(1) Every director or officer of a corporation that engages in an activity that may result in the discharge of any material into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge.

88. The said Act is further amended by striking out “municipality or” in each instance where it occurs,

(a) in section 28, clause 43 (2) (c), subsections 43 (3), 43 (8), 43 (9), 44 (1) and sections 55 and 60; and

(b) in the following provisions:

1. Subsection 56 (2), as enacted by the Statutes of Ontario, 1986, chapter 68, section 39.

2. Subsections 66 (1), 66 (2), 66 (3), 71 (1), 71 (2) and 71 (3), as enacted by the Statutes of Ontario, 1986, chapter 68, section 41.

PART III

Pesticides Act

89. Subsection 1 (1) of the *Pesticides Act*, being chapter 376 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 68, section 43, is further amended by re-lettering clause (ca) as (cb) and by adding thereto the following clauses:

- (ca) “discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

.

- (ga) “inspection” includes an audit, examination, survey, test and inquiry;

.

- (ta) “place” includes a building, structure, machine, vehicle or vessel.

90. Section 4 of the said Act is amended by striking out “deposit, add, emit or” in the third line and by striking out “deposit, addition, emission or” in the fourth line.

91. Section 12 of the said Act is repealed and the following substituted therefor:

12. A licence issued before or after section 91 of the *Environment Statute Law Amendment Act, 1988* comes into force expires as prescribed by the regulations.

Term of
licence
1988, c. 54

92. Subsections 17 (2) and (3) of the said Act are repealed.

93. Section 19 of the said Act is repealed and the following substituted therefor:

19.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

Inspection by
provincial
officer

- (a) entering any place in which the provincial officer reasonably believes a pesticide can be found;
- (b) entering any place in or from which the provincial officer reasonably believes a pesticide is being, has been or may be discharged into the environment;
- (c) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence or order under this Act or the regulations, or

- (ii) the discharge of a pesticide into the environment;
- (d) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence or order under this Act or the regulations;
- (e) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is or is required to be subject to or referred to in a permit, licence or order under this Act or the regulations,
 - (ii) contains a pesticide, or
 - (iii) is being or may be used in the performance of an extermination;
- (f) entering any place where a pesticide is stocked, displayed, sold or offered for sale;
- (g) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (h) taking samples;
- (i) recording or copying any information by any method;
- (j) requiring the production of any document that is required to be kept under this Act or the regulations and any other document that is related to the purposes of the inspection;
- (k) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (j) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and
- (l) making reasonable inquiries of any person, orally or in writing.

Requirement
to stop

(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.

(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.

Identification
of provincial
officers

(4) A provincial officer who exercises the power set out in clause (1) (l) may exclude from the questioning any person except counsel for the individual being questioned.

Power to
exclude
persons

(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 19a.

Entry to
dwellings

(6) A provincial officer who exercises any power set out in subsection (1) may, if the provincial officer is designated as such under the *Environmental Protection Act* or the *Ontario Water Resources Act*, as the case may be, do anything authorized by,

Power to
administer
other statutes
R.S.O. 1980,
cc. 141, 361

- (a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or
- (b) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*.

19a.—(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 19 (1) (a) to (k) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

Inspection
order

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order

under this section without delay if access is denied;
or

- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 19 (1) (a) to (k) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 19 (1) (a) to (k) and specified in the order for the period of time set out in the order.

Renewal

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) before or after expiry for one or more periods each of which is not more than thirty days.

When to be
executed

(3) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

Notice not
required

(4) An order under this section may be issued or renewed upon application without notice.

Samples and
copies

19b. A provincial officer may detain samples and copies obtained under section 19 or 19a for any period and for any of the purposes of this Act and the regulations.

Seizure

19c.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under this Act if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.

Possession

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Notice of
reason for
seizure

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Definition

19d.—(1) In this section, “offence” means an offence under section 4, 6 or 7.

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

Search by provincial officer re actual pollution

- (a) that an offence has been committed;
- (b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
- (c) that there are exigent circumstances that make it impractical to obtain a search warrant.

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Seizure

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Receipt

19e.—(1) A provincial officer who seizes any thing during an inspection or search under section 19c or 19d shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Report to justice

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 19c or 19d.

Application of R.S.O. 1980, c. 400, ss. 143, 144

19f. A provincial officer may use such force as is reasonably necessary,

Use of force

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act.

19g. It is a condition of every permit or licence under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 19 or 19a of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 10, 10a or 10b of the *Ontario*

Condition

R.S.O. 1980, cc. 141, 361

Water Resources Act of any place, other than any room actually used as a dwelling, to which the permit or licence relates.

94.—(1) Section 20 of the said Act is amended by adding thereto the following subsection:

Public notice

(3a) The Director shall give notice of the stop order or the varied or confirmed stop order, together with written reasons therefor, to the municipality in which the emergency exists and to the public in such manner as the Director considers appropriate.

(2) Subsection 20 (10) of the said Act is amended by adding at the end thereof “and shall give notice of the rescinding order to the municipality referred to in subsection (3a) and to the public in such manner as the Director considers appropriate”.

95.—(1) Clause 21 (2) (a) of the said Act is amended by striking out “deposit, addition, emission or” in the first and second lines.

(2) Clause 21 (2) (b) of the said Act is amended by striking out “deposit, addition, emission or” in the first line.

96. Section 22 of the said Act is amended by striking out “deposits, adds, emits or” in the first line.

97. Subsection 23 (1) of the said Act is amended by striking out “deposits, adds, emits or” in the first line and by striking out “deposit, addition, emission or” in the second line.

98.—(1) Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

Order binds
successor or
assignee

(1) An order of a court, the Minister, Director or a provincial officer under this Act is binding upon the successor or assignee of the person to whom it is directed.

(2) Subsection 24 (3) of the said Act is amended by inserting after “rescinded” in the first line “or set aside”.

99. Section 28 of the said Act is amended by adding thereto the following paragraph:

3a. prescribing expiry dates or the method of determining the expiry dates of licences or any class of licences.

100. The said Act is amended by adding thereto the following section:

33a. The counsel or agent acting on behalf of the Crown, by notice to the clerk of the Provincial Offences Court, may require that a provincial judge preside over a proceeding in respect of an offence under this Act.

Presiding
judge

101. Section 35 of the said Act is repealed.

102. The said Act is further amended by adding thereto the following section:

35a.—(1) In this section,

Definitions

“commercial motor vehicle” and “motor vehicle” have the same meanings as in the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“offence notice or summons” means an offence notice or summons under Part I of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(2) Delivery of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under this Act related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Service of
offence
notice or
summons

(3) Delivery of an offence notice or summons to the operator of a motor vehicle in respect of an offence under this Act related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Employer

(4) Subsections 27 (4), (5) and (6) of the *Provincial Offences Act* apply with necessary modifications to the service of an offence notice or summons on a corporation that is or is required to be the holder of or is subject to a document mentioned in clause 19 (1) (d) in respect of an offence under this Act.

Corporation

(5) Subsection (2) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Exception

(6) For the purposes of this section, the holder of a permit under Part II of the *Highway Traffic Act* shall be deemed to

Permit holder
deemed
owner

be the owner of the vehicle referred to in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle at the time the offence was committed.

Application
of subs. (6)

(7) Subsection (6) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

Commence-
ment

103. This Act comes into force on the day it receives Royal Assent.

Short title

104. The short title of this Act is the *Environment Statute Law Amendment Act, 1988*.



Bill 149

An Act to amend the Trespass to Property Act

The Hon. I. Scott
Attorney General

1st Reading June 7th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill's amendments to the *Trespass to Property Act* fall into five categories:

1. Following the recommendations of the *Anand Task Force on the Law Concerning Trespass to Publicly-Used Property as it Affects Youth and Minorities*, this Bill limits the occupier's discretion to exclude persons from premises such as shopping centres and parks.

Proposed sections 1a to 1j of the Act (section 2 of the Bill) apply to premises used by the public (a defined term). The occupiers of premises used by the public may exclude persons from the premises only for conduct that is not compatible with the public's use of the premises, or for contravening reasonable rules of which notice has been given (proposed sections 1c and 1d of the Act). Criteria for determining whether a person's conduct is not compatible with the public's use of the premises, and for determining whether an occupier's rule is reasonable, are set out in proposed sections 1e and 1f of the Act. The occupier may prohibit a person whose conduct constitutes an offence under the Act from re-entering the premises during a period of up to thirty days (proposed section 1g of the Act).

Proposed sections 1h to 1j of the Act and proposed subsection 4a (1) of the Act (section 5 of the Bill) set out defences to the new offence provisions.

Sections 8, 9, 11 and 12 of the Bill make complementary amendments.

2. The Act is made to apply to vehicles that are in operation (subsection 1 (2) of the Bill, amending subclause (iv) of the definition of "premises", which now reads "trains, railway cars, vehicles and aircraft, except while in operation"). As a result, operators of vehicles that are in operation will be able to enforce the Act. (The definition as now worded has been interpreted to require the operator of a public transit vehicle to clear it of other passengers before excluding an unruly passenger).

Proposed subsection 4a (2) of the Act (section 5 of the Bill) would complement the amended definition of "premises".

3. The notice provisions of the Act are amended to address the different situations of indoor and outdoor premises (proposed subsection 1c (2) and section 4 of the Act, sections 2 and 4 of the Bill), and indoor and outdoor signs (proposed section 5 of the Act, section 6 of the Bill). As well, section 6 of the Bill amends clause 5 (1) (a) of the Act to take account of types of communication other than oral and written, such as sign language.
4. Section 10 of the Bill revises section 11 of the Act, to allow the prosecution, under certain circumstances, of owners of motorized snow vehicles that are used to commit trespass. At present, only the owners of "motor vehicles" (the *Highway Traffic Act* definition, which does not include motorized snow vehicles) can be so prosecuted. As well, the current scheme of vicarious liability for individual, as opposed to corporate, owners is replaced with a presumption of liability that gives way if there is reasonable doubt.
5. The colour of right defence, found in subsection 2 (2) of the current Act, is moved to proposed subsection 4a (1) of the Act (section 5 of the Bill), because it applies to both premises used by the public and other premises.

Bill 149

1988

An Act to amend the Trespass to Property Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause 1 (1) (b) (iv) of the *Trespass to Property Act*, being chapter 511 of the Revised Statutes of Ontario, 1980, is amended by striking out “except while in operation” in the first and second lines.

(2) Subsection 1 (1) of the said Act is amended by adding thereto the following clauses:

(c) “premises used by the public” means premises to which the public is ordinarily admitted, whether a fee is charged for admission or not, and whose occupier is,

(i) a public authority,

(ii) any other person, if the public is admitted for the occupier’s economic benefit,

but does not include the common areas of a residential complex that are intended for the use of its residents;

(d) “public authority” means the Crown, a Crown agency, a municipality or local board, a conservation authority, a board as defined in the *Public Libraries Act, 1984* or any similar entity, except a board as defined in the *Education Act*. 1984, c. 57

R.S.O. 1980,
c. 129

2. The said Act is amended by adding thereto the following sections:

PREMISES USED BY THE PUBLIC

Application
of
ss. 1b to 1j

1a. Sections 1b to 1j apply in respect of premises used by the public, except during the hours that the public is not admitted to them.

Public
entitled to
use premises

1b. Members of the public are entitled to enter and remain on premises used by the public, subject to subsection 1c (1) (conduct incompatible with public's use, contravention of rules), section 1d (refusal to leave), subsection 1g (1) (re-entry after notice) and any other law.

Offence:
conduct in-
compatible
with public's
use of
premises,
contravention
of rules

1c.—(1) Every person who, on premises used by the public,

- (a) engages in conduct that is not compatible with the public's use of the premises; or
- (b) contravenes any of the occupier's reasonable rules, of which notice has been given, to govern conduct on the premises,

is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Limited
permission

(2) For the purposes of clause (1) (b), notice that a particular activity is permitted on outdoor premises is notice that all other activities and entry for the purpose are prohibited, and any additional notice of a prohibition shall be considered to be only for greater certainty.

Offence:
refusal to
leave

1d. Every person who engages in conduct that constitutes an offence under subsection 1c (1) and who, on being told of the conduct and directed to leave the premises by the occupier or a person authorized by the occupier, does not do so immediately is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Criteria:
conduct in-
compatible
with public's
use of
premises

1e. In determining whether a person's conduct is not compatible with the public's use of premises, the court shall consider,

- (a) the nature of the conduct;
- (b) the time when the person engaged in the conduct and the frequency of its repetition;
- (c) the nature of the public's use of the premises;

- (d) the degree of disruption, if any, caused by the conduct; and
- (e) the consequences of the conduct for other persons using the premises and for the occupier.

1f. In determining whether an occupier's rule is reasonable, the court shall consider the nature of the premises or part of the premises to which the rule applies.

Determination of reasonableness

1g.—(1) Every person who enters on premises or a part of premises used by the public when that entry has been prohibited in accordance with subsections (2) and (3) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Offence: re-entry after notice

(2) The occupier or a person authorized by the occupier may prohibit a person from entering on premises or a part of premises, for a specified period not exceeding thirty days from the date of the conduct complained of, by giving the person a notice prohibiting re-entry on premises.

Notice prohibiting re-entry on premises

(3) The notice prohibiting re-entry on premises shall be in the form prescribed by the regulations and shall,

Idem

- (a) state that the person has engaged in conduct that constitutes an offence under subsection 1c (1) and describe the conduct;
- (b) inform the person of the defence available under section 1h; and
- (c) identify the premises or part of the premises to which the notice applies.

1h.—(1) It is a defence to a charge under subsection 1g (1) that the person, before entering the premises or part of the premises, gave the occupier or the occupier's agent a written statement indicating,

Defence: re-entry after notice

- (a) that the conduct complained of did not occur;
- (b) that the conduct was compatible with the public's use of the premises and did not contravene any of the occupier's reasonable rules of which notice was given; or
- (c) that the conduct was compatible with the public's use of the premises, and that the rule contravened is not reasonable or that notice of it was not given.

Idem

(2) The defence fails if the occupier satisfies the court that the part of the person's statement referred to in clause (1) (a), (b) or (c) is incorrect.

Defence:
re-entry after
notice

1i. It is also a defence to a charge under subsection 1g (1) that it was necessary to enter the premises or part of the premises in respect of which the defendant was given a notice prohibiting re-entry, in order to go to a part of those premises or to other premises on which the defendant had the permission of an occupier to be, and that the defendant's activities were confined to,

(a) gaining access to that part or those other premises; and

(b) activities thereon permitted by that occupier.

Defence:
occupier's
permission

1j.—(1) It is a defence to a charge under subsection 1c (1), section 1d or subsection 1g (1) that the person had the occupier's express permission to enter on the premises or to engage in the activity.

Exception:
right or
authority
under law

(2) It is also a defence to a charge under subsection 1c (1), section 1d or subsection 1g (1) that the person was acting under a right or authority conferred by law.

OTHER PREMISES

Application
of
ss. 2, 3 and
4

1k. Sections 2, 3 and 4 apply in respect of,

(a) premises other than premises used by the public;

(b) premises used by the public, during the hours that the public is not admitted to them.

3. Subsection 2 (2) of the said Act is repealed.

4. Section 4 of the said Act is repealed and the following substituted therefor:

Limited
permission

4.—(1) Where notice is given that a particular activity is permitted on outdoor premises,

(a) all other activities and entry for the purpose are prohibited; and

(b) any additional notice of a prohibition shall be considered to be only for greater certainty.

(2) Where notice is given that a particular activity is prohibited on outdoor premises, and entry on the premises is not prohibited as provided by section 3 or subsection (1),

Limited
prohibition

- (a) that activity and entry for the purpose are prohibited; and
- (b) all other lawful activities and entry for the purpose are permitted.

5. The said Act is further amended by adding thereto the following section:

GENERAL

4a.—(1) It is a defence to a charge under subsection 1c (1), section 1d, subsection 1g (1) or subsection 2 (1), in respect of premises that are land, that the person charged reasonably believed that the person had an interest in the land that entitled the person to do the act complained of.

Defence:
colour of
right

(2) It is a defence to a charge under section 1d or subsection 2 (1), in respect of premises that are a ship, vessel, train, railway car, vehicle or aircraft, that the person could not leave the premises safely immediately after being directed to do so because of the location or motion at that time of the ship, vessel, train, railway car, vehicle or aircraft, but left as soon as it was safe.

Idem:
vehicle in
motion

6. Section 5 of the said Act is repealed and the following substituted therefor:

5.—(1) A notice under this Act may be given,

Method of
giving notice

- (a) by direct communication, whether orally, in writing or otherwise;
- (b) by means of outdoor signs posted so that they are clearly visible in daylight under normal conditions at each ordinary point of access to the premises to which they apply;
- (c) by means of indoor signs posted prominently at each ordinary point of access to the premises to which they apply or, if it is intended to govern conduct only on a part of the premises, posted so that persons entering that part of the premises are likely to see them; or

- (d) by means of outdoor markings in accordance with the marking system set out in section 7.

Substantial
compliance

(2) Substantial compliance with clause (1) (b), (c) or (d) is sufficient notice.

7. Subsection 7 (4) of the said Act is amended by striking out “from the approach to” in the third line and inserting in lieu thereof “at”.

8. Subsection 9 (1) of the said Act is amended by striking out “section 2” in the fourth line and inserting in lieu thereof “subsection 1c (1), section 1d, subsection 1g (1) or subsection 2 (1)”.

9. Section 10 of the said Act is amended by striking out “section 2” in the second line and inserting in lieu thereof “subsection 1c (1), section 1d, subsection 1g (1) or subsection 2 (1)”.

10. Section 11 of the said Act is repealed and the following substituted therefor:

Motorized
vehicles

11.—(1) In subsections (2) and (3), “motorized vehicle” means a vehicle propelled or driven otherwise than by muscular power, and includes an automobile, a motorcycle, a motor assisted bicycle, a motorized snow vehicle and an off-road vehicle.

Owner an
individual

(2) Where an offence under this Act is committed by means of a motorized vehicle and the owner of the vehicle is an individual, the owner shall be deemed to have been the driver, unless there is a reasonable doubt that that was the case.

Owner a
corporation

(3) Where an offence under this Act is committed by means of a motorized vehicle and the owner of the vehicle is a corporation, the corporation is liable to the fine provided by this Act, unless the driver is convicted of the offence or the corporation satisfies the court that the vehicle was being driven without its consent when the offence was committed.

11.—(1) Subsection 12 (1) of the said Act is amended by striking out “section 2” in the second line and inserting in lieu thereof “subsection 1c (1), section 1d, subsection 1g (1) or subsection 2 (1)”.

(2) Subsection 12 (2) of the said Act is amended by striking out “section 2” in the first line and inserting in lieu thereof “subsection 1c (1), section 1d, subsection 1g (1) or subsection 2 (1)”.

12. The said Act is further amended by adding thereto the following section:

13. The Lieutenant Governor in Council may make regulations prescribing the form of the notice prohibiting re-entry on premises referred to in subsection 1g (3). Regulations

13. This Act comes into force on the 1st day of January, 1989. Commence-
ment

14. The short title of this Act is the *Trespass to Property Amendment Act, 1988*. Short title



Bill 150

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General

1st Reading June 8th, 1988
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

Currently, journalists are not permitted to use tape recorders at court hearings, although lawyers and parties acting in person may do so. The Bill amends the *Courts of Justice Act, 1984* to allow journalists as well as lawyers and parties acting in person to make audio recordings, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. Recordings made in this way are not to be broadcast or reproduced.

Bill 150

1988

An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 146 (1) of the *Courts of Justice Act, 1984*, being chapter 11, is amended by adding thereto the following clause:

- (c) broadcast or reproduce an audio recording made as described in clause (2) (b).

(2) Clause 146 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) prohibits a solicitor, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Courts of Justice Amendment Act, 1988*. Short title

Bill 150

*(Chapter 69
Statutes of Ontario, 1988)*

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General

<i>1st Reading</i>	June 8th, 1988
<i>2nd Reading</i>	December 14th, 1988
<i>3rd Reading</i>	December 15th, 1988
<i>Royal Assent</i>	December 15th, 1988

Bill 150

1988

An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 146 (1) of the *Courts of Justice Act, 1984*, being chapter 11, is amended by adding thereto the following clause:

- (c) broadcast or reproduce an audio recording made as described in clause (2) (b).

(2) Clause 146 (2) (b) of the said Act is repealed and the following substituted therefor:

- (b) prohibits a solicitor, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Courts of Justice Amendment Act, 1988*. Short title

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Bill 151

An Act to revise the Personal Property Security Act and to repeal and amend certain other Acts related to Personal Property

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading June 8th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill is based on the recommendations of the Advisory Committee to the Minister of Consumer and Commercial Relations which were set out in the Report published by the Ministry in June, 1984 and in the Supplementary Report published in January, 1986. Among the features of the Bill are the following:

1. The law related to mortgages, charges and assignments whose registration is provided for under the *Corporation Securities Registration Act* (C.S.R.A.) will be integrated into the law related to other types of security agreements (sections 2, 78, 79, 80, 81). The C.S.R.A. will be repealed upon proclamation by the Lieutenant Governor (section 84). A notice of all undischarged C.S.R.A. registrations will be recorded in the personal property security registration system and provision will be made for recording changes of debtor names and other types of specified changes (section 78).
2. The Act will apply to the Crown and Crown agencies (section 3).
3. Money is treated as a separate class of property (section 1, clause 22 (f) and clause 29 (b)).
4. Registration will perfect a security interest in all types of collateral (section 23).
5. The general priority rules which apply to security interests have been clarified. A security interest perfected by registration will have priority over another security interest perfected by a different method as long as the registration occurred before the other security interest was perfected (subsection 30 (1)).
6. A seller who finances the purchase of goods and reserves a security interest therein will rank ahead of a competing secured party who also finances the purchase (subsection 33 (3)).
7. The thirty-day time period for registration for the purposes of perfection in the present *Personal Property Security Act* has been eliminated.
8. The present fixed three-year registration period will be replaced with a variable period. There will be a maximum period of five years for registrations and renewals where the collateral is or includes consumer goods (clause 51 (b)). There will be no maximum period for registrations relating to other types of collateral (clause 51 (c)).
9. Secured parties will be required to register a discharge of a registration relating to consumer goods within thirty days after all the obligations under the security agreement have been performed or forgiven (subsection 57 (1)).
10. Where the collateral is other than consumer goods, one financing statement may perfect security interests created or provided for in more than one security agreement between the same parties (subsection 45 (4)).
11. The validity of a registration will depend on whether or not a reasonable person is likely to be misled materially by an error or omission (subsection 46 (4)).
12. A secured party will be required to deliver a copy of a registered financing statement or financing change statement or a verification statement to the debtor within thirty days after the date of registration (subsection 46 (6)).
13. The scope of The Personal Property Security Assurance Fund will be expanded to cover claims for loss resulting from errors or omissions in the recording of notices of undischarged C.S.R.A. registrations and repair and storage lien registrations (subsection 44 (4)). A limit of \$1,000,000 will be set for all claims

under any one security agreement (subsection 44 (20)). A new administrative procedure will be established for the resolution of claims (subsections 44 (8) to (12)).

14. The definition of "secured party" has been expanded to include receivers and receivers and managers for the purposes of enforcement of the security agreement (section 1). Specific provisions related to receivers and receivers and managers are included in the Bill (subsection 60 (2)).
15. The courts are given much broader authority to give orders and directions concerning matters that arise under the Act, including the power to make orders directing compliance with section 17, subsections 34 (3) and 35 (4) and Part V as well as the power to relieve parties from compliance with these provisions (subsection 67 (1)).
16. The *Bills of Sale Act* will be repealed (section 84).



Bill 151

1988

**An Act to revise the Personal Property Security Act
and to repeal and amend certain other Acts
related to Personal Property**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“accessions” means goods that are installed in or affixed to other goods;

“account” means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;

“chattel paper” means one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods;

“collateral” means personal property that is subject to a security interest;

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“debtor” means a person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes,

- (a) an assignor of an account or chattel paper, and
- (b) a transferee of or successor to a debtor’s interest in collateral;

“default” means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

“document of title” means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee’s possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

“equipment” means goods that are not inventory or consumer goods;

“financing change statement” means a document in the form prescribed for a financing change statement;

“financing statement” means a document in the form prescribed for a financing statement;

“future advance” means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;

“goods” means tangible personal property other than chattel paper, documents of title, instruments, money and securities, and includes fixtures, growing crops, the unborn young of animals, timber to be cut, and minerals and hydrocarbons to be extracted;

“instrument” means,

- (a) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or

R.S.C. 1970,
c. B-5

- (b) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder,

but does not include a writing that constitutes part of chattel paper, a document of title or a security;

“intangible” means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments, money or securities;

“inventory” means goods that are held by a person for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;

“money” means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency;

“obligation secured”, for the purposes of determining the amount payable under a lease, means the amount contracted to be paid as rent under the lease and all other amounts that have or may become payable under the lease, including the amount, if any, required to be paid by the lessee to obtain full ownership of the collateral, as of the relevant date, less any amounts paid;

“personal property” means chattel paper, documents of title, goods, instruments, intangibles, money and securities and includes fixtures but does not include building materials that have been affixed to real property;

“prescribed” means prescribed by the regulations;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with collateral or the proceeds therefrom, and includes any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom;

“purchase” includes taking by sale, lease, negotiation, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in personal property;

“purchase-money security interest” means,

- (a) a security interest taken or reserved in collateral to secure payment of all or part of its price, or

- (b) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral to the extent that the value is applied to acquire the rights,

but does not include a transaction of sale by and lease back to the seller;

“purchaser” means a person who takes by purchase;

“registrar” means the registrar of personal property security;

“regulations” means the regulations made under this Act;

“secured party” means a person who holds a security interest for the person’s own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest and for the purposes of sections 17, 59 to 64, 66 and 67 includes a receiver or receiver and manager;

“security” means a document that is,

- (a) issued in bearer, order or registered form,
- (b) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (c) one of a class or series or by its terms is divisible into a class or series of documents, and
- (d) evidence of a share, participation or other interest in property or in an enterprise or is evidence of an obligation of the issuer,

and includes an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act, 1982*; 1982, c. 4

“security agreement” means an agreement that creates or provides for a security interest and includes a document evidencing a security interest;

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or

performance of an obligation, the interest of a transferee of an account or chattel paper;

“trust indenture” means any security agreement by the terms of which a body corporate, with or without share capital and wherever or however incorporated,

- (a) issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and
- (b) appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for;

“value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. R.S.O. 1980, c. 375, s. 1, *amended*.

Fungibles

(2) For the purposes of this Act, fungible goods and fungible securities are goods or securities, as the case may be, of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement. *New*.

PART I

APPLICATION AND CONFLICT OF LAWS

Application
of Act,
general

2. Subject to subsection 4 (1), this Act applies to,

- (a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,
 - (i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and
 - (ii) an assignment, lease or consignment that secures payment or performance of an obligation; and
- (b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation. R.S.O. 1980, c. 375, s. 2, *amended*.

3. This Act applies to the Crown and every agency of the Crown. *New.* Application to Crown

4.—(1) This Act does not apply,

Non-application of Act

(a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;

(b) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

(c) to a transaction under the *Pawnbrokers Act*;

R.S.O. 1980, c. 372

(d) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;

(e) to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies;

R.S.O. 1980, c. 33

(f) to a sale of accounts or chattel paper as part of a transaction to which the *Bulk Sales Act* applies;

R.S.O. 1980, c. 52

(g) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(h) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1980, c. 375, s. 3 (1); 1981, c. 58, s. 1, *amended*.

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. R.S.O. 1980, c. 375, s. 3 (2).

Rights under R.S.O. 1980, c. 462 not affected

5.—(1) Except as otherwise provided in this Act, the validity, perfection and effect of perfection or non-perfection of,

Conflict of laws, location of collateral

(a) a security interest in goods; and

- (b) a possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

Perfection of
security
interest
continued

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Ontario continues perfected in Ontario if a financing statement is registered in Ontario before the goods are brought in or if it is perfected in Ontario,

- (a) within sixty days after the goods are brought in;
- (b) within fifteen days after the day the secured party receives notice that the goods have been brought in; or
- (c) before the date that perfection ceases under the law of the jurisdiction in which the goods were situated at the time the security interest attached,

whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of those goods who acquires the goods from the debtor as consumer goods in good faith and without knowledge of the security interest and before the security interest is perfected in Ontario.

Perfection
otherwise

(3) Subsection (2) does not apply so as to prevent the perfection of a security interest after the expiry of the time limit set out in that subsection.

Perfection in
Ontario

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before being brought into Ontario, the security interest may be perfected under this Act.

Revendi-
cation

(5) Where goods brought into Ontario are subject to an unpaid seller's right to revendicate or to resume possession of the goods under the law of the Province of Quebec or any other jurisdiction, the right becomes unenforceable in Ontario twenty days after the goods are brought into Ontario unless the seller registers a financing statement or repossesses the goods within that twenty-day period. *New.*

Goods
brought into
province

6.—(1) Subject to section 7, if the parties to a security agreement creating a security interest in goods in one jurisdic-

tion understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to that other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attached, the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

(2) If the other jurisdiction mentioned in subsection (1) is not Ontario, and the goods are later brought into Ontario, the security interest in the goods is deemed to be one to which subsection 5 (2) applies if it was perfected under the law of the jurisdiction to which the goods were removed. *New.*

Perfection in
province

7.—(1) The validity, perfection and effect of perfection or non-perfection,

Conflict of
laws, location
of debtor

(a) of a security interest in,

(i) an intangible, or

(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and

(b) of a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

(2) If a debtor changes location to Ontario, a perfected security interest referred to in subsection (1) continues perfected in Ontario if it is perfected in Ontario,

Change of
location

(a) within sixty days from the day the debtor changes location;

(b) within fifteen days from the day the secured party receives notice that the debtor has changed location; or

(c) prior to the day that perfection ceases under the law of the jurisdiction referred to in subsection (1),

whichever is the earliest.

Idem

(3) A security interest that is not perfected as provided in subsection (2) may be otherwise perfected under this Act.

Location of debtor

(4) For the purpose of this section, a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence. *New.*

Procedural and substantive issues

8.—(1) Despite sections 5, 6 and 7,

- (a) procedural matters affecting the enforcement of the right of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;
- (b) procedural matters affecting the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and
- (c) substantive matters affecting the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

Deemed perfection

(2) For the purposes of this Part, a security interest shall be deemed to be perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest that is enforceable against the debtor and third parties. *New.*

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness of security agreement

9.—(1) Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. R.S.O. 1980, c. 375, s. 9.

Idem

(2) A security agreement is not unenforceable against a third party by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless the third party is actually misled by the defect, irregularity, omission or error. *New.*

(3) Without restricting the generality of subsection (2), the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described. *New.* Idem

10. Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if the secured party fails to do so after a request by the debtor, the District Court, on the application of the debtor, may order the delivery of such a copy to the debtor. R.S.O. 1980, c. 375, s. 11, *amended.* Delivery of copy of agreement

11.—(1) A security interest is not enforceable against a third party unless it has attached. Attachment required

(2) A security interest, including a security interest in the nature of a floating charge, attaches when, When security interest attaches

- (a) the secured party or a person on behalf of the secured party other than the debtor or the debtor's agent obtains possession of the collateral or when the debtor signs a security agreement that contains a description of the collateral sufficient to enable it to be identified;
- (b) value is given; and
- (c) the debtor has rights in the collateral,

unless the parties have agreed to postpone the time for attachment, in which case the security interest attaches at the agreed time. R.S.O. 1980, c. 375, ss. 10, 12 (1), *amended.*

(3) For the purpose of subsection (2), the debtor has no rights in, Idem

- (a) crops until they become growing crops;
- (b) fish until they are caught;
- (c) the young of animals until they are conceived;
- (d) minerals or hydrocarbons until they are extracted; or
- (e) timber until it is cut. R.S.O. 1980, c. 375, s. 12 (2), *amended.*

After-
acquired
property

12.—(1) A security agreement may cover after-acquired property.

Exception

(2) No security interest attaches under an after-acquired property clause in a security agreement,

- (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value. R.S.O. 1980, c. 375, s. 13, *amended*.

Future
advances

13. A security agreement may secure future advances. R.S.O. 1980, c. 375, s. 15, *amended*.

Agreement
not to assert
defence
against
assignee

14.—(1) An agreement by a debtor not to assert against an assignee any claim or defence that the debtor has against the debtor's seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against a holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada). R.S.O. 1980, c. 375, s. 16.

R.S.C. 1970,
c. B-5

Non-
application
R.S.O. 1980,
c. 87, s. 31
Seller's
warranties

(2) Subsection (1) does not apply to an assignment to which section 31 of the *Consumer Protection Act* applies. *New*.

15. Where a seller retains a purchase-money security interest in goods,

R.S.O. 1980,
c. 462

- (a) the *Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and
- (b) except as provided in section 14, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1980, c. 375, s. 17, *amended*.

Acceleration
provisions

16. Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the agreement shall be construed to mean that the secured party may accelerate payment or per-

formance only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy. R.S.O. 1980, c. 375, s. 18, *amended*.

17.—(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties. R.S.O. 1980, c. 375, s. 19 (1). Care of collateral

(2) Unless otherwise agreed, where collateral is in the secured party's possession, Idem, rights and duties of secured party

- (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the collateral and in its preservation, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured;
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it. R.S.O. 1980, c. 375, s. 19 (2), *amended*.

(3) A secured party is liable for any loss or damage caused by the secured party's failure to meet any obligations imposed by subsection (1) or (2), but does not lose the security interest in the collateral. Liability for loss

(4) A secured party may use the collateral, Use of collateral

- (a) in the manner and to the extent provided in the security agreement;
- (b) for the purpose of preserving the collateral or its value; or
- (c) pursuant to an order of,
 - (i) the court before which a question relating thereto is being heard, or
 - (ii) the District Court upon application by the secured party.

Idem

(5) A secured party,

- (a) is liable for any loss or damage caused by the secured party's use of the collateral otherwise than as authorized by subsection (4); and
- (b) is subject to being ordered or restrained as provided in subsection 67 (1). R.S.O. 1980, c. 375, s. 19 (3-5).

Statements of
account

18.—(1) A person who is a debtor or judgment creditor or who has an interest in the collateral or who is the authorized representative of such a person, by a notice in writing given to the secured party and containing an address for reply, may require the secured party to furnish to the person any one or more of,

- (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof as of the date specified in the notice;
- (b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral or a part thereof as specified in a list attached to the notice;
- (c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof;
- (d) a true copy of the security agreement; or
- (e) sufficient information as to the location of the security agreement or a true copy thereof so as to enable inspection of the security agreement or copy.

(2) Clauses (1) (a), (b) and (c) do not apply where the secured party is the trustee under a trust indenture.

Exception,
indenture
trustee

(3) The secured party, on the reasonable request of a person entitled to receive a true copy of the security agreement under clause (1) (d), shall permit the person or the person's authorized representative to inspect the security agreement or a true copy thereof during normal business hours at the location disclosed under clause (1) (e).

Inspection of
security
agreement

(4) If the secured party claims a security interest in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may so indicate in lieu of approving or correcting the list of such collateral as required by clause (1) (b).

Idem

(5) Subject to the payment of any charge required under subsection (7), the secured party shall answer a notice given under subsection (1) within fifteen days after receiving it, and, if without reasonable excuse,

Time for
compliance
with notice,
liability for
failure to
answer

(a) the secured party does not answer within such fifteen-day period, the secured party is liable for any loss or damage caused thereby to any person who is entitled to receive information under this section; or

(b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

(6) Where the person receiving a notice under subsection (1) no longer has a security interest in the collateral, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse the person fails to do so or the answer is incomplete or incorrect, the person is liable for any loss or damage caused thereby to any person entitled to receive information under this section.

Successors in
interest

(7) The secured party may require payment in advance of the charge prescribed for each statement or copy of the security agreement required under subsection (1), but the debtor is entitled to a statement without charge once in every six months.

Charges

(8) On an application to the District Court, the court, by order, may,

Court order

- (a) exempt, in whole or in part, the secured party from complying with a notice given under subsection (1), or a request under subsection (3), if the person giving the notice, not being the debtor, does not establish to the satisfaction of the court that the person has an interest in the collateral or that the person is a judgment creditor;
- (b) extend the time for complying with the notice given under subsection (1);
- (c) require the secured party to comply with a notice given under subsection (1) or a request under subsection (3); or
- (d) make such other order as it considers just.

Liability

(9) An order made under clause (8) (b) or (c) does not affect the liability of the secured party under subsection (5).

Extended
time for
compliance

(10) Despite subsection (9), where the secured party applies to the District Court for an extension of time under clause (8) (b) within fifteen days of receiving a notice under subsection (1) and the court makes an order extending the time for compliance, the secured party shall answer the notice within the time as extended and not within the time as required by subsection (5) and, if without reasonable excuse,

- (a) the secured party fails to answer the notice within the time as extended, the secured party is liable for any loss or damage caused thereby to any person entitled to receive information under this section; or
- (b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer. R.S.O. 1980, c. 375, s. 20, *amended*.

PART III

PERFECTION AND PRIORITIES

Perfection

19. A security interest is perfected when,

- (a) it has attached; and
- (b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence. R.S.O. 1980, c. 375, s. 21.

20.—(1) Except as provided in subsection (3), until perfected, a security interest, Unperfected
security
interests

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who assumes control of the collateral through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the *Creditors' Relief Act* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has assumed control, or the proceeds of such property; R.S.O. 1980,
c. 103

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, securities, instruments or goods is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.

(2) The rights of a person,

Idem

(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,

(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or

(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of this Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect.

Purchase-money security interest

(3) A purchase-money security interest that is perfected by registration,

(a) in collateral, other than an intangible, before or within ten days after,

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is earlier; or

(b) in an intangible before or within ten days after the attachment of the security interest in the intangible,

has priority over,

(c) an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b); and

(d) the interest of a transferee of collateral that forms all or part of a sale in bulk within the meaning of the *Bulk Sales Act*. R.S.O. 1980, c. 375, s. 22, amended.

R.S.O. 1980, c. 52

Continuity of perfection

21.—(1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment. R.S.O. 1980, c. 375, s. 23.

Perfection by possession or repossession

22. Possession or repossession of the collateral by the secured party, or on the secured party's behalf by a person

other than the debtor or the debtor's agent, perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) negotiable documents of title; and
- (f) money,

but only while it is actually held as collateral. R.S.O. 1980, c. 375, s. 24, *amended*.

23. Registration perfects a security interest in any type of collateral. *New.* Perfection by registration

24.—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value secured by a written security agreement. R.S.O. 1980, c. 375, s. 26 (1). Temporary perfection

(2) A security interest perfected by possession in, Idem

(a) an instrument or a security that a secured party delivers to the debtor for,

(i) ultimate sale or exchange,

(ii) presentation, collection or renewal, or

(iii) registration of transfer; or

(b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,

(i) ultimate sale or exchange,

(ii) loading, unloading, storing, shipping or transshipping, or

- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor. R.S.O. 1980, c. 375, s. 26 (2), *amended*.

Idem

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest. R.S.O. 1980, c. 375, s. 26 (3).

Perfecting as to proceeds

25.—(1) Where collateral gives rise to proceeds, the security interest therein,

- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized such dealing; and

- (b) extends to the proceeds. R.S.O. 1980, c. 375, s. 27 (1), *amended*.

Idem

(2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective or, where the security interest is perfected with respect to the proceeds by any other method permitted under this Act, for so long as the conditions of such perfection are satisfied.

Idem

(3) A security interest in proceeds is a continuously perfected security interest if the interest in the collateral was perfected when the proceeds arose.

Idem

(4) If a security interest in collateral was perfected otherwise than by registration, the security interest in the proceeds becomes unperfected ten days after the debtor acquires an interest in the proceeds unless the security interest in the proceeds is perfected under this Act.

Motor vehicles classified as consumer goods

(5) Where a motor vehicle, as defined in the regulations, is proceeds, a person who buys or leases the vehicle as consumer goods in good faith takes it free of any security interest therein that extends to it under clause (1) (b) even though it is perfected under subsection (2) unless the secured party has registered a financing change statement that sets out the vehicle identification number in the designated place. *New*.

26.—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto. R.S.O. 1980, c. 375, s. 28 (1).

Perfecting as to goods held by a bailee

(2) A security interest in collateral in the possession of a person, other than the debtor, the debtor's agent or a bailee mentioned in subsection (1), is perfected by, Idem

- (a) issuance of a document of title in the name of the secured party;
- (b) possession on behalf of the secured party; or
- (c) registration. R.S.O. 1980, c. 375, s. 28 (2), *amended*.

27.—(1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if,

Goods returned or repossessed

- (a) the buyer or lessee has taken free of the security interest under clause 25 (1) (a) or subsection 28 (1) or (2);
- (b) the goods are returned to or repossessed by the debtor; and
- (c) the obligation secured remains unpaid or unperformed.

(2) Where a security interest in goods reattaches under subsection (1), then any question as to, Idem

- (a) whether or not the security interest in the goods is perfected; and
- (b) the time of its perfection or registration,

shall be determined as if the goods had not been sold or leased.

(3) If a sale or lease of goods creates an account or chattel paper and,

Where sale or lease creates an account or chattel paper

- (a) the account or chattel paper is transferred to a secured party; and

- (b) the goods are returned to or repossessed by the seller or lessor,

the transferee has a security interest in the goods.

Temporary
perfection

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten days after the return or repossession of the goods unless the transferee registers a financing statement in respect of the security interest in, or takes possession of, the goods before the expiry of that period.

Transferee of
account

(5) Where a transferee of an account has a perfected security interest in goods under subsections (3) and (4), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the account was perfected.

Transferee of
chattel paper

(6) Where a transferee of chattel paper has a perfected security interest in goods under subsections (3) and (4),

- (a) as between the transferee and the holder of a perfected security interest that attached under subsection (1), the person who had priority as to the chattel paper also has priority as to the goods; and
- (b) as between the transferee and a person other than the holder of a perfected security interest that attached under subsection (1), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the chattel paper was perfected. R.S.O. 1980, c. 375, s. 29, *amended*.

Transactions
in ordinary
course of
business,
buyers of
goods

28.—(1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

Idem, lessors
of goods

(2) A lessee of goods from a lessor who leases the goods in the ordinary course of business holds the goods, to the extent of the lessee's rights under the lease, free from any security interest therein given by the lessor even though it is perfected

and the lessee knows of it, unless the lessee also knew that the lease constituted a breach of the security agreement.

(3) A purchaser of chattel paper who takes possession of it in the ordinary course of business has, to the extent that the purchaser gives new value, priority over any security interest in it, Idem,
purchasers of
chattel paper

(a) that was perfected by registration if the purchaser did not know at the time of taking possession that the chattel paper was subject to a security interest; or

(b) that has attached to proceeds of inventory under section 25, whatever the extent of the purchaser's knowledge.

(4) A purchaser of collateral that is an instrument, negotiable document of title or security has priority over any security interest therein perfected by registration or temporarily perfected under section 23 or 24 if the purchaser, Idem,
purchasers of
instruments

(a) gave value for the interest purchased;

(b) purchased the collateral without knowledge that it was subject to a security interest; and

(c) except in a case to which clause (d) applies, has taken possession of the collateral; or

(d) where the collateral is an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act, 1982*, has received constructive delivery or is deemed to be in possession of the collateral. R.S.O. 1980, c. 375, s. 30, *amended*. 1982, c. 4

(5) Where a motor vehicle, as defined in the regulations, is sold other than in the ordinary course of business of the seller and the motor vehicle is classified as equipment of the seller, the buyer takes it free from any security interest therein given by the seller even though it is perfected by registration unless the vehicle identification number of the motor vehicle is set out in the designated place on a registered financing statement or financing change statement or unless the buyer knew that the sale constituted a breach of the security agreement. *New.* Motor
vehicles,
transaction
other than in
ordinary
course

29. The rights of a person who is,

Negotiable
instruments,
etc.

R.S.C. 1970,
c. B-5

- (a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada); or
- (b) a transferee from the debtor of money,

are to be determined without regard to this Act. R.S.O. 1980, c. 375, s. 31 (1), *amended*.

Priorities,
general rule

30.—(1) If no other provision of this Act is applicable, the following priority rules apply to security interests in the same collateral:

1. Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.
2. Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,
 - i. the security interest perfected by registration has priority over the other security interest if the registration occurred before the perfection of the other security interest, and
 - ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.
3. Where priority is to be determined between security interests perfected otherwise than by registration, priority shall be determined by the order of perfection.
4. Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment. R.S.O. 1980, c. 375, s. 35 (1), *amended*.

Idem

(2) For the purpose of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by

registration if it was originally perfected otherwise than by registration. R.S.O. 1980, c. 375, s. 35 (2).

(3) Subject to subsection (4), where future advances are made while a security interest is perfected, the security interest has the same priority with respect to each future advance as it has with respect to the first advance. Future advances

(4) A future advance under a perfected security interest is subordinate to the rights of persons mentioned in subclauses 20 (1) (a) (ii) and (iii) if the advance was made after the secured party received written notification of the interest of any such person unless, Exception

(a) the secured party makes the advance for the purpose of paying reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and its preservation; or

(b) the secured party is bound to make the advance, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(5) For the purpose of subsection (1), the date for registration or perfection as to collateral is also the date for registration or perfection as to proceeds. Proceeds

(6) Where a security interest that is perfected by registration becomes unperfected and is again perfected by registration, the security interest shall be deemed to have been continuously perfected from the time of first perfection except that if a person acquired rights in all or part of the collateral during the period when the security interest was unperfected, the registration shall not be effective as against the person who acquired the rights during such period. *New.* Reperfected security interests

31. Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that the person has in respect of the materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority. R.S.O. 1980, c. 375, s. 32, *amended.* Liens for materials and services

32.—(1) A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the Crops

debtor to produce the crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise even though the person giving value has notice of the earlier security interest.

Idem

(2) Where more than one perfected security interest is given priority by subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced. R.S.O. 1980, c. 375, s. 34 (1), *amended*.

Purchase-money security interest, inventory

33.—(1) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor, if,

(a) the purchase-money security interest was perfected at the time,

(i) the debtor obtained possession of the inventory, or

(ii) a third party, at the request of the debtor, obtained or held possession of the inventory,

whichever is earlier;

(b) before the debtor receives possession of the inventory, the purchase-money secured party gives notice in writing to every other secured party who has registered a financing statement in which the collateral is classified as inventory before the date of registration by the purchase-money secured party; and

(c) the notice referred to in clause (b) states that the person giving it has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

Purchase-money security interests other than inventory

(2) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest,

(a) in the case of collateral, other than an intangible, was perfected before or within ten days after,

- (i) the debtor obtained possession of the collateral as a debtor, or
- (ii) a third party, at the request of the debtor, obtained or held possession of the collateral,

whichever is earlier; or

- (b) in the case of an intangible, was perfected before or within ten days after the attachment of the security interest in the intangible. R.S.O. 1980, c. 375, s. 34 (2, 3), *amended*.

(3) Where more than one purchase-money security interest is given priority by subsections (1) and (2), the purchase-money security interest, if any, of the seller has priority over any other purchase-money security interest given by the same debtor. *New*.

Priority of
seller's
purchase-
money
security
interest

34.—(1) A security interest in goods that attached,

Fixtures

- (a) before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or
- (b) after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest in the goods attached and who has not consented in writing to the security interest or disclaimed an interest in the fixture.

(2) A security interest mentioned in subsection (1) is subordinate to the interest of,

Exceptions

- (a) a subsequent purchaser for value of an interest in the real property; or
- (b) a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances,

if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with section 54.

Removal of
collateral

(3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provisions of this Act respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

Security

(4) A person entitled to reimbursement under subsection (3) may refuse permission to remove the fixture until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 36 (1-4), *amended*.

Notice

(5) A secured party who has the right to remove a fixture from real property shall serve, on each person who appears by the records of the proper land registry office to have an interest in the real property, a notice in writing of the secured party's intention to remove the fixture containing,

- (a) the name and address of the secured party;
- (b) a description of the fixture to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligation secured by the security interest of the secured party;
- (d) a description of the real property to which the fixture is affixed sufficient to enable the real property to be identified; and
- (e) a statement of intention to remove the fixture unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

Idem

(6) The notice mentioned in subsection (5) shall be served in accordance with section 68 or by registered mail addressed to the person to whom notice is to be given at the address furnished under section 166 of the *Land Titles Act* or section 37 of the *Registry Act*, or where no such address has been furnished, addressed to the solicitor whose name appears on the registered instrument by which the person appears to have an interest. *New*.

R.S.O. 1980,
cc. 230, 445

Retention of
collateral

(7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fix-

ture has been removed from the real property by the secured party in accordance with subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 36 (5), *amended*.

35.—(1) Subject to subsections (2) and (3) of this section and section 37, a security interest in goods that attached, Accessions

- (a) before the goods became an accession, has priority as to the accession over the claim of any person in respect of the whole; and
- (b) after the goods became an accession, has priority as to the accession over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole at the date the security interest attached to the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(2) A security interest referred to in subsection (1), Exceptions

- (a) is subordinate to the interest of,
 - (i) a subsequent buyer of an interest in the whole, and
 - (ii) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances,

if the subsequent sale or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected; and

- (b) is subordinate to the interest of a creditor of the debtor who assumes control of the whole through execution, attachment, garnishment, charging order, equitable execution or other legal process, if control is assumed before the security interest is perfected. R.S.O. 1980, c. 375, s. 37 (1, 2), *amended*.

(3) Despite clause (2) (b), a purchase-money security interest in an accession that is perfected before or within ten days after the debtor obtains possession of the accession has prior- Idem

ity over the interest of a creditor referred to in that clause.
New.

Removal of
collateral

(4) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Act respecting default, remove the accession from the whole if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the accession or by the necessity for replacement.

Security

(5) A person entitled to reimbursement under subsection (4) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 37 (3), *amended*.

Notice

(6) The secured party who has the right to remove an accession from the whole shall serve, on each person known to the secured party as having an interest in the other goods and on any person with a security interest in such other goods perfected by registration against the name of the debtor or against the vehicle identification number of such other goods, if such number is required for registration, a notice in writing of the secured party's intention to remove the accession containing,

- (a) the name and address of the secured party;
- (b) a description of the accession to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligations secured by the security interest of the secured party;
- (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accession from the whole unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

Idem

(7) The notice mentioned in subsection (6) shall be served in accordance with section 68 at least ten days before the accession is removed. *New.*

(8) A person having an interest in the whole that is subordinate to a security interest in the accession may, before the accession has been removed by the secured party in accordance with subsection (3), retain the accession upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 37 (4), *amended*.

Retention of collateral

36.—(1) A security interest in a right to payment under a lease of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the lessor's interest in the lease or in the real property thereby demised if the interest, or notice thereof, of the person is registered in the proper land registry office before the interest, or notice thereof, of the secured party is registered in the proper land registry office.

Real property payments, rents

(2) A security interest in a right to payment under a mortgage or charge of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the mortgagee's or chargee's interest in the mortgage or charge if the interest of the person is registered in the proper land registry office before a notice of the security interest is registered in the proper land registry office. 1981, c. 58, s. 2.

Mortgages

37. A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. R.S.O. 1980, c. 375, s. 38.

Commingled goods

38. A secured party may, in the security agreement or otherwise, subordinate the secured party's security interest to any other security interest and such subordination is effective according to its terms. R.S.O. 1980, c. 375, s. 39, *amended*.

Subordination

39. The rights of a debtor in collateral may be transferred voluntarily or involuntarily despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise. R.S.O. 1980, c. 375, s. 33.

Alienation of rights of a debtor

40.—(1) Unless a person obligated on an account or on chattel paper has made an enforceable agreement not to assert

Person obligated on an account or on chattel paper

defences or claims arising out of a contract, the rights of an assignee are subject to,

- (a) all the terms of the contract between the person and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the person against the assignor that accrued before the person received notice of the assignment.

Idem

(2) A person obligated on an account or on chattel paper may pay the assignor until the person receives notice, reasonably identifying the relevant rights, that the account or chattel paper has been assigned, and, if requested by the person, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if the assignee does not do so, the person may pay the assignor. R.S.O. 1980, c. 375, s. 40 (1, 2), *amended*.

Modification,
etc., effective
against
assignee

(3) To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's right under or the assignor's ability to perform the contract, is effective against an assignee unless the person obligated on the account or chattel paper has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. *New*.

PART IV

REGISTRATION

Registration
system

1988, c. ...

41.—(1) A registration system, including a central office and branch offices, shall be maintained for the purposes of this Act and the *Repair and Storage Liens Act, 1988*. R.S.O. 1980, c. 375, s. 41 (1), *amended*.

Central office

(2) The central office of the registration system shall be located at or near the City of Toronto.

Branch
offices

(3) Branch offices of the registration system shall be established at such places as are designated by the regulations. R.S.O. 1980, c. 375, s. 41 (2, 3).

Registrar,
branch
registrars

42.—(1) There shall be a registrar of personal property security and a branch registrar for each branch office.

(2) The registrar shall be the public servant designated as registrar by the Minister of Consumer and Commercial Relations. Idem

(3) The branch registrars shall be those public servants designated by name or position as branch registrars by the registrar. Idem

(4) The registrar shall have a seal of office in such form as the Lieutenant Governor in Council may by order approve. Seal of office
R.S.O. 1980, c. 375, s. 42, *amended*.

(5) No action or other proceeding for damages shall be instituted against the registrar or any person employed in the Ministry of Consumer and Commercial Relations for any act done in good faith in the execution or intended execution of the person's duty under this Act or the *Repair and Storage Liens Act, 1988* or for any alleged neglect or default in the execution in good faith of the person's duty thereunder. Protection from personal liability
1988, c. ...

(6) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* but subject to subsection 44 (18), subsection (5) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (5) to which it would otherwise be subject. Crown Liability
R.S.O. 1980, c. 393

(7) The registrar and each branch registrar may designate one or more public servants to act on his or her behalf. Delegation
R.S.O. 1980, c. 375, s. 43.

43.—(1) Upon the request of any person for a search of the individual debtor name index, business debtor name index or motor vehicle identification number index and upon payment of the prescribed fee, the registrar shall issue a certificate stating, Certificate of registrar

- (a) whether, at the time mentioned in the certificate, there is registered a financing statement or a financing change statement the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the financing statement or financing change statement as a debtor or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information;
- (b) whether, at the time mentioned in the certificate, there is entered in the central file of the registration

system any information required or permitted to be entered by section 78 in which the name with respect to which the inquiry is made is shown as debtor; and

- 1988, c. ... (c) whether, at the time mentioned in the certificate, there is registered a claim for lien or a change statement under the *Repair and Storage Liens Act, 1988* the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the claim for lien or change statement as an owner or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information.

Idem (2) A certificate issued under subsection (1) is *prima facie* proof of the contents thereof.

Similar names (3) A certificate issued under subsection (1) may include information relating to a registered financing statement or financing change statement recorded in the central file of the registration system which sets out in the designated place a debtor name or vehicle identification number which is similar, in the opinion of the registrar, to the name or number with respect to which the inquiry is made.

Certified copies (4) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a certified copy of a registered financing statement or a registered financing change statement.

Idem (5) A certified copy furnished under subsection (4) is *prima facie* proof of the contents of the document so certified. R.S.O. 1980, c. 375, s. 44, *amended*.

Assurance Fund **44.**—(1) The account in the Consolidated Revenue Fund known as “The Personal Property Security Assurance Fund” is hereby continued.

Idem (2) The prescribed portion of the fees received under this Act shall be paid into the Assurance Fund. R.S.O. 1980, c. 375, s. 45 (1), *amended*.

Idem (3) Interest shall be credited to the Assurance Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year

upon the balance in the Assurance Fund at the end of the previous calendar year. R.S.O. 1980, c. 375, s. 45 (2).

(4) Any person who suffers loss or damage as a result of the person's reliance upon a certificate of the registrar issued under section 43 that is incorrect because of an error or omission in the operation of the system of registration, recording and production of information under this Part or section 78 or under the *Repair and Storage Liens Act, 1988* is entitled to be paid compensation out of the Assurance Fund so far as the Assurance Fund is sufficient for that purpose, having regard to any claims which have been approved but have not been paid. Entitlement to payment
1988, c. ...

(5) A person claiming to be entitled to payment of compensation out of the Assurance Fund shall file an application with the registrar, setting out the person's name and address and particulars of the claim. Claims

(6) A claim against the Assurance Fund must be made within one year from the time that the loss or damage giving rise to the claim came to the claimant's knowledge. Idem

(7) For the purposes of this section, where the holders of debt obligations issued, guaranteed or provided for under a security agreement are represented by a trustee or other person and the trustee or other person has relied upon a certificate of the registrar issued under section 43, all of the holders of the debt obligations shall be deemed to have relied on the certificate, and where a claim is made against the Assurance Fund, it shall be made by the trustee or other person on behalf of all the holders of such obligations. Idem

(8) The registrar shall determine a claim against the Assurance Fund within ninety days of receiving an application for compensation and, Duty of registrar

- (a) where the registrar determines that the claim should not be paid, the registrar shall forthwith advise the claimant of the decision; or
- (b) where the registrar determines that the claimant is entitled to a payment out of the Assurance Fund, the registrar shall make an offer of settlement in satisfaction of the claim,

and the decision or offer of settlement shall be deemed to be confirmed thirty days after the mailing thereof to the claimant unless the claimant requests a hearing under subsection (9).

- Hearing (9) Where the registrar makes a decision under clause (8) (a) or an offer of settlement under clause (8) (b) that is for less than the full amount of the claim, the claimant, within thirty days from the day that the decision or offer is mailed to the claimant, may request the Director of Titles appointed under the *Land Titles Act* to hold a hearing to determine the claimant's entitlement to compensation and the request shall be in writing.
- R.S.O. 1980,
c. 230
- Idem (10) As soon as possible after receiving a request under subsection (9), the Director of Titles or, where a person has been appointed under subsection (11), the person so appointed shall hold a hearing and decide the claimant's entitlement to compensation and, if he or she considers it appropriate, award costs.
- Delegation (11) The Director of Titles may appoint a person to act on his or her behalf in the hearing of a claim for compensation under this section.
- Confirmation
of decision (12) A decision under subsection (10) shall be deemed to be confirmed at the expiration of thirty days from the date of the mailing of the decision to the claimant, unless a notice of an application under subsection (14) is served on the Director of Titles within that time.
- Application
to District
Court (13) Where the registrar fails to determine a claim for compensation under subsection (8) within ninety days, the District Court, on the application of the claimant made within sixty days of the expiry of the ninety-day period, may order the payment of such compensation as is set out in the order.
- Idem (14) Where the claimant is dissatisfied with a decision under subsection (10), the District Court, on the application of the claimant made within thirty days of the mailing of the decision to the claimant, may order that the decision under subsection (10) be set aside and may order the payment of such compensation as may be set out in the order.
- Payment (15) When an offer of settlement has been accepted or the time for an application under subsection (13) or (14) has expired or, where an application has been made, it is disposed of and it is finally determined that the claimant is entitled to payment of compensation out of the Assurance Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay the sum to the claimant out of the Assurance Fund.

(16) Where compensation is paid to a claimant under this section, the registrar is subrogated to the rights of the claimant to the amount so paid against any person indebted to the claimant and whose debt to the claimant was the basis of the loss or damage in respect of which the claimant was paid, and the registrar may enforce those rights by action in court or otherwise in the name of Her Majesty in right of Ontario.

Subrogation

(17) The registrar may require a claimant to exhaust the claimant's remedies against the collateral, the debtor and any guarantor and, where the registrar does so, the Assurance Fund is liable for the reasonable costs of the claimant, including solicitor and client costs.

Action by claimant

(18) No action or other proceeding for damages shall be instituted against the Crown with respect to any matter in relation to which a claim against the Assurance Fund has been filed.

Protection from liability

(19) No claim shall be filed against the Assurance Fund with respect to any matter in relation to which an action or other proceeding for damages has been commenced in any court against the Crown.

Idem

(20) The maximum amount that may be paid out of the Assurance Fund with respect to claims related to any one security agreement shall not exceed \$1,000,000 in total.

Maximum payable from Assurance Fund

(21) If the total of all claims against the Assurance Fund in respect of a security agreement exceeds \$1,000,000, payments to claimants shall be made in accordance with the ratio that the amount of the claimant's loss bears to the total amount of the losses of all claimants. *New.*

Idem

45.—(1) In order to perfect a security interest by registration under this Act, a financing statement shall be registered. R.S.O. 1980, c. 375, s. 47 (1), *amended.*

Registration of financing statement

(2) Where the collateral is consumer goods, the financing statement referred to in subsection (1) shall not be registered before the security agreement is signed by the debtor and, where a financing statement is registered in contravention of this subsection, the registration of the financing statement does not constitute registration or perfection under this Act.

Consumer goods

(3) Where the collateral is not consumer goods, the financing statement referred to in subsection (1) may be registered before or after the security agreement is signed by the debtor.

Collateral other than consumer goods

Subsequent
security
agreements

(4) Except where the collateral is consumer goods, one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties. *New.*

Place of
registration

46.—(1) A financing statement or financing change statement to be registered under this Act may be tendered for registration,

(a) by delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations. R.S.O. 1980, c. 375, s. 46, *amended.*

Form

(2) Every financing statement and financing change statement to be registered under this Act shall be in the prescribed form.

Classification
of collateral

(3) Except with respect to rights to proceeds, where a financing statement or financing change statement sets out a classification of collateral and also contains words that appear to limit the scope of the classification, then, unless otherwise indicated in the financing statement or financing change statement, the secured party may claim a security interest perfected by registration only in the class as limited. *New.*

Errors, etc.

(4) A financing statement or financing change statement is not invalidated nor is its effect impaired by reason only of an error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission. R.S.O. 1980, c. 375, ss. 4, 47 (5), *amended.*

Effect of
registration

(5) Registration of a financing statement or financing change statement,

(a) does not constitute constructive notice or knowledge to or by third parties of the existence of the financing statement or financing change statement or of the contents thereof; and

(b) does not create a presumption that this Act applies to the transaction to which the registration relates.

Copy to
debtor

(6) Where a financing statement or financing change statement is registered, the secured party shall deliver to the debtor within thirty days after the date of registration,

(a) a copy of the registered financing statement or financing change statement; or

- (b) a copy of a verification statement in the prescribed form.

(7) Where the secured party without reasonable excuse fails to deliver a copy required under subsection (6), the secured party shall pay \$500 to the debtor which sum is recoverable in the Provincial Court (Civil Division). *New.* Penalty

47.—(1) A financing change statement may be registered where a security interest is perfected by registration and the secured party has assigned the secured party's interest in all or part of the collateral. R.S.O. 1980, c. 375, s. 48 (1), *amended.* Assignment of security interest

(2) Where a security interest has not been perfected by registration and the secured party has assigned the secured party's interest, a financing statement referred to in section 46 may be registered, Idem

- (a) naming the assignor as the secured party and subsection (1) applies; or
- (b) naming the assignee as the secured party and subsection (1) does not apply. R.S.O. 1980, c. 375, s. 48 (2), *amended.*

(3) Upon the registration of the financing change statement under subsection (1) or the financing statement under subsection (2), the assignee becomes a secured party of record. R.S.O. 1980, c. 375, s. 48 (3). Idem

48.—(1) Where a security interest is perfected by registration and the debtor, with the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen days after the transfer is made unless the secured party registers a financing change statement within such fifteen days. R.S.O. 1980, c. 375, s. 49 (1), *amended.* Transfer of collateral

(2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of, Idem

- (a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and

- (b) the day the secured party learns the information required to register a financing change statement,

unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

Change of
debtor name

(3) Where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days. R.S.O. 1980, c. 375, s. 49 (2), *amended*.

Transferee in
possession

(4) Where the debtor's interest in all or part of the collateral is transferred by the debtor without the consent of the secured party and there is one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns of the name of the transferee who has possession of the collateral, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement within thirty days of learning of the name of the transferee who has possession of the collateral and the information required to register a financing change statement and the secured party need not register financing change statements with respect to any intermediate transferee. *New*.

Financing
change
statement

(5) A security interest that becomes unperfected under subsection (1), (2) or (3) may be perfected again by registering a financing change statement at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof. R.S.O. 1980, c. 375, s. 49 (3), *amended*.

Notification
by Registrar
General

(6) Where the Registrar General notifies the registrar that a debtor has changed his or her name and provides the registrar with particulars of a registration under this Act in which the debtor's former name appears as debtor, the registrar shall amend the debtor's name as shown in the central file of the registration system related to the registration.

Idem

(7) Subsection (3) does not apply if the registrar, under subsection (6), amends the central file of the registration system,

- (a) before the secured party learns of the new name of the debtor; or

- (b) within thirty days of the day the secured party learns of the new name of the debtor.

(8) If the registrar, under subsection (6), amends the central file of the registration system more than thirty days after the day the secured party learns of the new name of the debtor, the registrar's amendment shall be deemed to be a financing change statement registered by the secured party at the time the amendment was made. *New.* Idem

49. A financing change statement may be registered at any time during the period that the registration of a financing statement is effective, Amendments

- (a) to correct an error or omission in the registered financing statement or any financing change statement related thereto; or
- (b) to amend the registered financing statement or any financing change statement related thereto where the amendment is not otherwise provided for in this Part. *New.*

50. Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective. *R.S.O. 1980, c. 375, s. 51.* Subordination of security interest

51. The registration of a financing statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective until, Effective period of registration

- (a) it is discharged if the financing statement or a financing change statement under subsection 52 (1) in relation thereto indicates that the registration is for a perpetual period and the collateral is not, or does not include, consumer goods;
- (b) if the collateral is, or includes, consumer goods, the earliest of,
 - (i) the time it is discharged,
 - (ii) the end of the registration period set out in the financing statement or in the most recent financing change statement under subsection 52 (1), or

- (iii) the end of the fifth anniversary of the registration of the financing statement or of the most recent financing change statement under subsection 52 (1); and

(c) in any other case, the earlier of,

- (i) the time it is discharged, or
- (ii) the end of the registration period set out in the financing statement or in the most recent financing change statement under subsection 52 (1). *New.*

Renewal of
registration

52.—(1) Where a security interest has been perfected by registration, the registration may be renewed before the registration ceases to be effective by the registration of a financing change statement.

Reperfection

(2) Where a security interest has been perfected by registration and the registration has ceased to be effective, the security interest may be perfected again by the registration of a financing statement. R.S.O. 1980, c. 375, s. 52, *amended.*

Financing
change
statement

53. The registration of a financing change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registration of the financing statement to which it relates is effective. *New.*

Notice in
land registry
office

54.—(1) A notice of security interest, in the prescribed form, may be registered in the proper land registry office, where,

- (a) the collateral is or includes fixtures or goods that may become fixtures or crops, or minerals or hydrocarbons to be extracted, or timber to be cut; or
- (b) the security interest is a security interest in a right to payment under a lease, mortgage or charge of real property to which this Act applies. 1981, c. 58, s. 4.

Consumer
goods,
registration
period

(2) Where the collateral is consumer goods, a notice registered under clause (1) (a) or an extension notice registered under subsection (3), as the case may be, shall set out an expiration date, which date shall not be later than the fifth anniversary of the date of registration and the notice or extension notice is effective until the end of the expiration date.

(3) A registration to which subsection (2) applies may be extended before the end of the registration period by the registration of an extension notice. Idem

(4) A notice registered under subsection (1) may be discharged or partially discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office. Discharge

(5) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of subsection 34 (2) to have knowledge of the security interest. R.S.O. 1980, c. 375, s. 54 (2, 3), *amended*. Effect of registration

(6) Where the collateral is consumer goods and the expiration date set out in a notice registered under clause (1) (a) has passed and an extension notice has not been registered or has expired, the land described in the notice is not affected by any claim under the notice but this subsection does not prevent the registration of a new notice under clause (1) (a). *New*. Loss of claim

55. A registration may be discharged or partially discharged by the registration of a financing change statement discharging or partially discharging the registration. R.S.O. 1980, c. 375, s. 55 (1), *amended*. Discharge or partial discharge of registration

56.—(1) Where a financing statement or notice of security interest is registered under this Act, and, Demand for discharge, where security interest existed

- (a) all the obligations under a security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by a security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54 (4), or both, and the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.

(2) Where a financing statement or notice of security interest is registered under this Act and the person named in the Idem, where no security interest acquired

financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54 (4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be.

Interpretation

(3) For the purposes of subsections (4) and (5), “secured party” includes a person named in a financing statement or notice of security interest as the secured party to whom subsection (2) applies.

Failure to
deliver

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statement or certificate of discharge or partial discharge, or both, as the case may be, required under subsection (1) or (2) within ten days after receipt of a demand therefor, the secured party shall pay \$500 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Security or
payment into
court

(5) Upon application to the District Court, the court may,

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as the court may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement or notice of security interest; or
- (b) order upon any ground that the court considers proper that,
 - (i) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be, or
 - (ii) the land registrar delete any entry in the books of the land registry office related to the notice of security interest or that the land registrar amend the books of the land registry office to indicate that the security interest has

been discharged or partially discharged, as the case may be.

(6) Where the person receiving a notice under clause (1) (a) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay \$500 to the person making the demand and any changes resulting from the failure which sum and damages are recoverable in any court of competent jurisdiction. *New.*

Successors in interest

57.—(1) Within thirty days after all the obligations under a security agreement that creates a security interest in consumer goods have been performed or forgiven, the secured party shall register,

Consumer goods, duty of secured party to register or provide discharge

(a) a financing change statement discharging the registration if the security interest has been perfected by registration; and

(b) a certificate of discharge, if a notice of security interest has been registered under section 54.

(2) Where a secured party fails to comply with subsection (1), the secured party shall, on written notice from the debtor, pay the debtor \$500 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Failure to register

(3) Subsections (1) and (2) do not affect any rights under section 56 of the debtor or of any other person having an interest in the collateral. *New.*

Rights not affected

PART V

DEFAULT—RIGHTS AND REMEDIES

58. The rights and remedies mentioned in this Part are cumulative. R.S.O. 1980, c. 375, s. 56 (1).

Rights and remedies cumulative

59.—(1) Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and, when in possession of the collateral, the rights, remedies and duties provided in section 17.

Rights and remedies of secured party

Enforcement
by secured
party

(2) The secured party may enforce a security interest by any method permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is permitted with respect to the documents of title is also permitted, with necessary modifications, with respect to the goods covered thereby.

Rights and
remedies of
debtor

(3) Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and in section 17.

Determi-
nation of
standards

(4) Subject to subsection (5), a security agreement may set out the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.

Non-waiver
of rights and
duties

(5) Despite clause (1) (a), the provisions of section 17, and sections 63 to 66, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Act. R.S.O. 1980, c. 375, s. 56 (2-5), *amended*.

Where
agreement
covers both
real and
personal
property

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights, remedies and duties in respect of the real property, with all necessary modifications, as if the personal property were real property, in which case this Part does not apply. R.S.O. 1980, c. 375, s. 56 (6).

No merger in
judgment

(7) A security agreement does not merge merely because the claim has been reduced to judgment by the secured party or because the secured party has levied execution thereunder on the collateral. R.S.O. 1980, c. 375, s. 56 (7), *amended*.

Receiver,
receiver and
manager

60.—(1) Nothing in this Act prevents,

- (a) the parties to a security agreement from agreeing that the secured party may appoint a receiver or receiver and manager and, except as provided by this Act, determining the rights and duties of the receiver or receiver and manager by agreement; or
- (b) a court of competent jurisdiction from appointing a receiver or receiver and manager and determining

rights and duties of the receiver or receiver and manager by order.

(2) Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the Supreme Court, with respect to a receiver or receiver and manager however appointed, may, Idem

- (a) remove, replace or discharge the receiver or receiver and manager;
- (b) give directions on any matter relating to the duties of the receiver or receiver and manager;
- (c) approve the accounts and fix the remuneration of the receiver or receiver and manager;
- (d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager. *New.*

61.—(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled, Collection
rights of
secured party

- (a) to notify any person obligated on an account or on chattel paper or any obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral; and
- (b) to take control of any proceeds to which the secured party is entitled under section 25.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from a person obligated on an account or on chattel paper or an obligor on an instrument shall proceed in a commercially reasonable manner and the secured party may deduct the reasonable expenses of realization from the collections. *R.S.O. 1980, c. 375, s. 57, amended.* Idem

62. Upon default under a security agreement,

Possession
upon default

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;

- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and
- (c) the secured party may dispose of collateral on the debtor's premises in accordance with section 63. R.S.O. 1980, c. 375, s. 57, *amended*.

Disposal of
collateral

63.—(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to,

- (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and
- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition,

and the surplus, if any, shall be dealt with in accordance with section 64. R.S.O. 1980, c. 375, s. 59 (1), *amended*.

Methods of
disposition

(2) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (4), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (3).

Secured
party's right
to delay
disposition of
collateral

(3) Subject to subsection 65 (1), the secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (4), *amended*.

Notice
required

(4) Subject to subsection (6), the secured party shall give not less than fifteen days notice in writing of the matters described in subsection (5) to,

- (a) the debtor who owes payment or performance of the obligation secured;
- (b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or an obligor who may owe payment or performance of the obligation secured;
- (c) every person who has a security interest in the collateral and whose interest,
 - (i) was perfected by possession, the continuance of which was prevented by the secured party who has taken possession of the collateral, or
 - (ii) is perfected by registration before the date the notice is served on the debtor;
- (d) every person with an interest in the collateral who has delivered a written notice to the secured party of the interest in the collateral before the date that the notice is served on the debtor.

(5) The notice mentioned in subsection (4) shall set out, Idem

- (a) a brief description of the collateral;
- (b) the amount required to satisfy the obligation secured by the security interest;
- (c) the amount of the applicable expenses referred to in clause (1) (a) or, in a case where the amount of such expenses has not been determined, a reasonable estimate thereof;
- (d) a statement that upon receipt of payment the payor will be credited with any rebates or allowances to which the debtor is entitled by law or under the agreement;
- (e) a statement that upon payment of the amounts due under clauses (b) and (c), any person entitled to receive notice may redeem the collateral;
- (f) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and

- (g) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

Idem

(6) If the notice to the debtor under clause (4) (a) is mailed, then the relevant date for the purpose of clause (4) (b), subclause (4) (c) (ii) and clause (4) (d) shall be the date of mailing and not the date of service.

Notice not required

(7) The notice mentioned in subsection (4) is not required where,

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline speedily in value;
- (c) the collateral is of a type customarily sold on a recognized market;
- (d) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (e) for any reason not otherwise provided for in this subsection, the District Court, on an application made without notice to any other person, is satisfied that a notice is not required;
- (f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral; or
- (g) a receiver and manager disposes of collateral in the course of the debtor's business. *New.*

Secured party's right to purchase collateral

(8) The secured party may buy the collateral or any part thereof only at a public sale unless the District Court, on application, orders otherwise. R.S.O. 1980, c. 375, s. 59 (7), *amended.*

Effect of disposition of collateral

(9) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

Idem

(10) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then,

- (a) in the case of a public sale, if the buyer has no knowledge of any defect in the sale and if the buyer does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
- (b) in any other case, if the buyer acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a buyer for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(11) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. R.S.O. 1980, c. 375, s. 59 (8-10).

Certain
transfers of
collateral

64.—(1) Where the secured party has dealt with the collateral under section 61 or has disposed of it, the secured party shall account for and, subject to subsection (4), pay over any surplus consecutively to,

Distribution
of surplus

- (a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest,
 - (i) was perfected by possession, the continuance of which was prevented by the secured party who took possession of the collateral, or
 - (ii) was, immediately before the dealing or disposition, perfected by registration;
- (b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and
- (c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of the claim of any person referred to in clauses (a), (b) and (c) against the recipient of the surplus shall not be prejudiced thereby. R.S.O. 1980, c. 375, s. 60, *amended*.

Proof of
interest

(2) The secured party may require any person mentioned in subsection (1) to furnish proof of that person's interest, and, unless the proof is furnished within ten days after demand by the secured party, the secured party need not pay over any portion of the surplus to the person.

Deficiency

(3) Unless otherwise agreed in the security agreement, or unless otherwise provided under this or any other Act, the debtor is liable for any deficiency.

Payment into
court

(4) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the District Court and the surplus shall not be paid out except upon an application under section 67 by a person claiming an entitlement thereto. *New.*

Compulsory
disposition of
consumer
goods

65.—(1) Where a security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying the debtor's rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 63, and, if the secured party fails to do so, the debtor may proceed under section 67 or in an action for damages or loss sustained. R.S.O. 1980, c. 375, s. 61 (1).

Acceptance
of collateral

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in clauses 63 (4) (a) to (c). R.S.O. 1980, c. 375, s. 61 (2), *amended.*

Objection

(3) If any person entitled to notification under subsection (2), whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within thirty days after service of the notice, the secured party shall dispose of the collateral in accordance with section 63. R.S.O. 1980, c. 375, s. 61 (3), *part, amended.*

Proof of
interest

(4) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after demand by the secured party, the secured party may proceed as if no objection had been made.

(5) Upon application to the District Court by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because,

Application
to judge

- (a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or
- (b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under clause 63 (1) (a). *New.*

(6) If no effective objection is made, the secured party is, at the expiration of the thirty-day period mentioned in subsection (3), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured, and thereafter is entitled to the collateral free from all rights and interests therein of any person entitled to notification under subsection (2) whose interest is subordinate to that of the secured party and who was served with such notice. R.S.O. 1980, c. 375, s. 61 (3), *part, amended.*

Foreclosure

(7) When a secured party disposes of the collateral after expiration of the period mentioned in subsection (6) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party. *New.*

Effect of
disposition

66.—(1) At any time before the secured party, under section 63, has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, any person entitled to receive notice under subsection 63 (4) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party, but if more than one person elects to redeem, the priority of their rights to redeem shall be the same as the priority of their respective interests. R.S.O. 1980, c. 375, s. 62, *amended.*

Redemption
of collateral

Consumer
goods, re-
instatement

(2) Where the collateral is consumer goods, at any time before the secured party, under section 63 has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, the debtor may reinstate the security agreement by paying,

- (a) the sum actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default which entitles the secured party to dispose of the collateral; and
- (b) a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party.

Limitation

(3) The right to reinstate under subsection (2) may not be exercised more than once during the term of the security agreement, unless the District Court, on the application of the debtor, orders otherwise. *New.*

PART VI

MISCELLANEOUS

Court orders
and
directions

67.—(1) Upon application to the Supreme Court or to the District Court by a debtor, a creditor of a debtor, a secured party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this section, the court may,

- (a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with Part V, section 17 or subsection 34 (3) or 35 (4);
- (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under Part V, section 17 or subsection 34 (3) or 35 (4);
- (c) make any order necessary to determine questions of priority or entitlement in or to the collateral or its proceeds;
- (d) relieve any party from compliance with the requirements of Part V, section 17 or subsection 34 (3) or 35 (4), but only on terms that are just for all parties concerned;

- (e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned; and
- (f) subject to subsection (3), make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party. R.S.O. 1980, c. 375, s. 63 (1), *amended*.

(2) Where a person fails to discharge any duties or obligations imposed upon the person by Part V, section 17 or subsection 34 (3) or 35 (4), the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and, where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of \$500 or the actual loss or damages. R.S.O. 1980, c. 375, s. 63 (2), *amended*.

Compensation for loss or damages

(3) Except as otherwise provided in this Act, any provision in any security agreement which purports to exclude any duty or obligation imposed under this Act or to exclude or limit liability for failure to discharge duties or obligations imposed by this Act is void. *New*.

Void provisions

(4) Where an application under subsection (1) is made to the District Court, a respondent, by notice served on the applicant and on the other respondents, if any, and filed with proof of service with the local registrar of the District Court at least two days before the hearing date of the application, may require the application to be removed into the Supreme Court. R.S.O. 1980, c. 375, c. 63 (3), *amended*.

Removal into Supreme Court

(5) Upon the filing of the notice with proof of service, the local registrar of the District Court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county or district in which the application was commenced, and the application shall continue as if it had commenced in the Supreme Court. R.S.O. 1980, c. 375, s. 63 (4, 5), *amended*.

Transmission of papers

68.—(1) Where under this Act, a notice or any other document may be or is required to be given or delivered to or served on,

Service of notices, etc.

- (a) a secured party named in a registered financing statement or financing change statement, the notice or document may be given to or served on the secured party by personal service or by registered mail at the most recent address of the secured party as shown in the financing statement or financing change statement; and
- (b) a debtor by a secured party, the notice or document may be given to or served on the debtor by personal service or by registered mail at the last address of the debtor known to the secured party.

Idem

(2) Where under this Act, a notice or any document may be or is required to be given or delivered to or served on a person, other than a person to whom subsection (1) applies, the notice or document may be given to or served on,

- (a) an individual, by personal service or by registered mail addressed to the individual at his or her residence or place of business and, if the individual has more than one residence or place of business, at any one of the residences or places of business;
- (b) a partnership,
 - (i) by personal service,
 - (A) upon any one or more of the partners, or
 - (B) upon any person having control or management of the partnership business at the principal place of business of the partnership, or
 - (ii) by registered mail addressed to,
 - (A) the partnership,
 - (B) any one or more of the general partners,
 - (C) any person having control or management of the partnership business,at the principal address of the partnership;
- (c) a municipal corporation by delivery or registered mail addressed to its head of council or chief administrative officer at its principal office;

- (d) a local board, as defined in the *Municipal Affairs Act*, by delivery or registered mail addressed to its chairman or chief administrative officer at its principal office; R.S.O. 1980,
c. 303
- (e) a corporation, other than a municipal corporation or a local board thereof,
- (i) by serving any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business, or
 - (ii) by registered mail addressed to the address of its registered or head office;
- (f) upon Her Majesty in right of Ontario, unless the regulations otherwise provide, by delivery or registered mail addressed to the registrar at the central office of the registration system.

(3) Where an individual, partnership or body corporate resides or has its principal office or its registered or head office out of Ontario but is carrying on business in Ontario, a notice or document referred to in subsection (2) may be given, delivered or served by serving any person carrying on the business in Ontario and in the case of an extra-provincial company, by serving the attorney for service in Ontario and such service may be by personal service or by registered mail at the address of the person or attorney. Out of
province

(4) A notice or document given or served by registered mail shall be deemed to have been given, delivered or served when the addressee actually receives the notice or document, or, except for the purposes of subsection 33 (1), upon the expiry of six days after the day of registration, whichever is earlier. Service by
registered
mail

(5) Any notice or other document to be served on any person in relation to a proceeding in a court shall be served in accordance with the rules of the court and subsections (1) to (4) do not apply to any such notice. *New.* Court
documents

69. For the purposes of this Act, a person learns or knows or has notice or is notified when service is effected in accordance with section 68 or the regulations or when, Knowledge
and notice

- (a) in the case of an individual, information comes to his or her attention under circumstances in which a reasonable person would take cognizance of it;

- (b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) in the case of a corporation, other than a municipal corporation or local board thereof, information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it. *New.*

Extension or
abridgment
of time

70. Where in this Act, other than in sections 5, 6, 7 and 12 and in Parts III and IV and in this Part, a time prescribed within which or before which any act or thing must be done, the District Court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the court considers just. *New.*

Destruction
of books,
etc.

71.—(1) The registrar may authorize the destruction of books, documents, records or paper, including those related to a prior law as defined in Part VII,

- (a) that have been microfilmed; or
- (b) that in the registrar's opinion need not be preserved any longer. *R.S.O. 1980, c. 375, s. 68 (1), amended.*

Removal of
information
from
registration
system

(2) The registrar may remove from the central file of the registration system information related to a financing statement or financing change statement,

- (a) if the financing statement is no longer effective;
- (b) upon the receipt of a financing change statement discharging the registration of a financing statement;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a financing statement or a financing change statement. *R.S.O. 1980, c. 375, s. 68 (2), amended.*

(3) The registrar, upon notice to the secured party, may remove from the central file of the registration system information related to a financing change statement if, Idem

- (a) it does not set out the correct registration or file number of the financing statement or financing change statement to which it relates; or
- (b) it does not set out the name of the debtor as that name is set out in the financing statement or financing change statement to which it relates.

(4) Where the destruction of a document has been authorized under subsection (1), the registrar, instead of destroying the document, may release the document to the secured party or the secured party's agent. *New.* Idem

72. Except in so far as they are inconsistent with the express provisions of this Act, the principles of law and equity, including the law merchant, the law relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, shall supplement this Act and shall continue to apply. *New.* Application of principles of law and equity

73. Where there is conflict between a provision of this Act and a provision of the *Consumer Protection Act*, the provision of the *Consumer Protection Act* prevails and, where there is conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1980, c. 375, s. 69. Conflict with other Acts
R.S.O. 1980, c. 87

74. The Lieutenant Governor in Council may make regulations, Regulations

- (a) designating branch offices;
- (b) prescribing the duties of the registrar and branch registrars;
- (c) prescribing business hours for the offices of the registration system or any of them;
- (d) respecting the registration system and searches thereof;
- (e) requiring the payment of fees and prescribing the amounts thereof;

- (f) prescribing the amount of any charge to which a secured party is entitled for any statement or copy provided pursuant to section 18;
- (g) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (h) requiring that the forms to be used shall be those provided or approved by the registrar;
- (i) governing the time assigned to the registration of financing statements and financing change statements;
- (j) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;
- (k) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (l) prescribing additional methods of serving notices and other documents for the purposes of section 68 and prescribing methods of serving notices and other documents on persons not referred to in section 68;
- (m) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;
- (n) defining "motor vehicle";
- (o) prescribing a lexicon of French-English terms to be used in connection with prescribed forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law. R.S.O. 1980, c. 375, s. 70 (1); 1981, c. 58, s. 5 (1), *amended*.

PART VII

APPLICATION, TRANSITION, AMENDMENTS, REPEALS, COMMENCEMENT

Definition

75. In this Part, "prior law" means,

- (a) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement was one to which *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, being chapters 33, 45 and 76, respectively, of the Revised Statutes of Ontario, 1970, or the predecessors thereof, applied;
- (b) the law related to a security agreement made before the day this section comes into force where the security agreement was one to which the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or predecessor thereof, applied;
- (c) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement is not a security agreement described in clause (a) or (b). *New.*

76.—(1) Except as otherwise provided in this Part, this Act, Application
of Act

- (a) applies,
 - (i) to every security agreement made on or after the day this section comes into force,
 - (ii) to every security agreement made after the 1st day of April, 1976 if the security agreement was one to which the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, applied immediately before the repeal of that Act; and
- (b) does not apply to a security agreement to which a prior law applied at the time of its making including any advance or extension of credit, delivery of goods or other event occurring pursuant thereto whether before or after this Act comes into force.

(2) This Act does not affect the rights acquired by any person from a judgment or order of any court given or made before the day this Act comes into force, or affect the outcome of any litigation commenced on or before that day. Saving

(3) Priority between security interests under security agreements described in subclause (1) (a) (ii) shall be determined in accordance with the law as it existed immediately before this Priority of
interest
under
R.S.O. 1980,
c. 375

section came into force if the security interests have been continuously perfected since this section came into force. *New.*

Chattel
mortgages,
etc., under
prior law

77.—(1) Every security agreement to which the prior law as described in clause 75 (a) applied at the time of its making continues to have such force and effect as if the Acts referred to in that clause had not been repealed if the security interest was covered by an unexpired registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this section.

Idem

(2) Where a security interest under a security agreement described in subsection (1) was not covered under an unexpired registration immediately before the coming into force of this section, the security interest may be perfected by the registration of a financing statement.

Application
of Part IV

(3) Part IV applies to the perfection, continuation of perfection and reperfecting of a security interest under a security agreement to which subsection (1) or (2) applies.

Where
certain
changes have
not been
recorded

(4) Where before the coming into force of this section, a secured party under a security agreement to which the prior law as described in clause 75 (a) applied at the time of its making failed to register a financing change statement after learning of the transfer of collateral and the information required to register a financing change statement or after learning of the change of name and the new name of the debtor, the secured party shall register a financing change statement recording the transfer or the new name of the debtor, as the case may be, within twenty-four months of the coming into force of this section.

Effect of
failure to
comply

(5) Where a secured party fails to register a financing change statement under subsection (4) by the end of the period referred to in that subsection, the security interest created by the security agreement shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the name of the transferee or the changed name of the debtor, as the case may be. *New.*

Corporation
securities

78.—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, (collectively referred to in this section as the former Act) that was registered under the former Act before the coming into force of this section,

continues to have such force and effect as if the former Act had not been repealed and except as provided in this section and sections 43 and 44, this Act does not apply to any such mortgage, charge or assignment.

(2) Where a mortgage, charge or assignment, the registration of which was provided for in the former Act, was made before the coming into force of this section but was not registered under that Act, Idem

- (a) this Act shall be deemed always to have applied to the mortgage, charge or assignment; and
- (b) the security interest created by the mortgage, charge or assignment may be perfected under this Act.

(3) The registrar shall, with respect to each mortgage, charge and assignment, and each assignment thereof, registered under the former Act for which no certificate of discharge has been registered as of the day this section comes into force, enter into the central file of the registration system established for the purposes of this Act, Entries in registration system

- (a) the name of the debtor as shown in the registration under the former Act;
- (b) the registration number under the former Act; and
- (c) the following notation:

This registration was made under the *Corporation Securities Registration Act* (R.S.O. 1980, c. 94) or a predecessor thereof. A copy of the instrument is available for inspection in the offices of the Ministry of Consumer and Commercial Relations located at
(address of appropriate office)
.....

(4) Mortgages, charges and assignments, and assignments thereof, registered under the former Act for which a certificate of discharge has been registered before the coming into force of this section shall not be entered into the registration system established for the purposes of this Act. Discharged registrations

(5) A registration entered into the central file of the registration system under subsection (3) expires when it is discharged in accordance with this section. Registration period

Change of
name of
debtor

(6) Where before the coming into force of this section and after the original registration under the former Act the debtor changed its name and the secured party learned of the change before the coming into force of this section, the secured party shall register a financing change statement recording the change of name within twenty-four months of the coming into force of this section.

Effect of
failure to
comply

(7) Where a secured party fails to register a financing change statement under subsection (6) by the end of the period referred to in that subsection, the security interest created by the mortgage, charge or assignment shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the changed name of the debtor.

Discharge

(8) A secured party may discharge in whole or in part a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under subsection (3) by the registration of a financing change statement.

Order for
discharge

(9) The debtor or any person having an interest in the collateral may make an application to the District Court for an order discharging or partially discharging a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under subsection (3).

Idem

(10) Upon hearing an application made under subsection (9) and upon being satisfied that no security interest was created or that the security interest is released or partially released, the court may order,

- (a) that the registration be discharged where no security interest was ever created or the security interest has been released; or
- (b) that a financing change statement be registered where the security interest is partially released.

Removal of
information
from
registration
system

(11) The registrar may remove from the registration system information related to a registration, upon receipt of,

- (a) a financing change statement under subsection (8) that wholly discharges the registration entered into the central file of the registration system under subsection (3); or

- (b) a certified copy of an order made under clause (10) (a).

(12) Sections 47, 48, 49 and 50, except subsections 48 (1) and (2), apply to the perfection, continuation of perfection and reperfecting of a security interest under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3). Application of ss. 47-50

(13) Where there is a default under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3), the secured party may elect to enforce the security agreement in accordance with Part V by stating in the notice referred to in subsection 63 (4) or 65 (2) that the secured party has elected to be bound by Part V. Election re: enforcement of security agreements

(14) Subsections (6) and (12) do not apply so as to require a trustee under a trust indenture to file a financing change statement recording the change of a debtor's name unless after the coming into force of this section the trust indenture is amended. *New.* Trust indentures

79.—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, shall not be invalid by reason only that it was not registered under that Act, if the security interest created by the mortgage, charge or assignment was perfected by registration in compliance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, and the said *Personal Property Security Act* shall be deemed to have applied to the security interest so created from its creation and upon the coming into force of this Act, this Act applies to the security interest. 1981, c. 2, s. 1, *amended.* Saving, certain corporation securities

(2) Subsection (1) applies even if after the perfection of a security interest by registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, the mortgage, charge or assignment was registered under the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof. *New.* Idem

- (3) Despite subsections (1) and (2), where,

Dual registration

- (a) a security agreement created or provided for both,

- (i) a security interest in any class or classes of collateral and the security interest was a mort-

gage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, and

- (ii) a security interest in collateral other than collateral described in subclause (i) and the security interest was not a mortgage, charge or assignment, the registration of which was provided for in the said *Corporation Securities Registration Act*, or a predecessor thereof; and

R.S.O. 1980,
c. 94

(b) regardless of which occurred first,

- (i) the mortgage, charge or assignment described in subclause (a) (i) was registered under the said *Corporation Securities Registration Act*, or a predecessor thereof, and
- (ii) a financing statement was registered under a predecessor of this Act in relation to the security interest described in subclause (a) (ii) and the financing statement and the financing change statements, if any, in relation thereto, do not claim a security interest in the collateral described in subclause (a) (i),

the said *Corporation Securities Registration Act* and this Act, except subsections (1) and (2) applies to the security interest described in subclause (a) (i) and the predecessor of this Act and this Act applies to the security interest described in subclause (a) (ii). *New.*

Inspection of
prior law
documents

80.—(1) Upon the request of any person and upon payment of the prescribed fee, a document registered under a prior law shall be provided for inspection unless the document has been destroyed.

Copies of
documents

(2) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a certified copy of a document registered under a prior law unless the document has been destroyed. R.S.O. 1980, c. 375, s. 66 (2), *amended.*

Idem

(3) A certified copy provided under subsection (2) is *prima facie* proof of the contents of the document so certified. *New.*

81. The order of priorities between a security interest created under a prior law and any other security interest shall be determined without regard to the priority rules set out in this Act. *New.*

Priorities

82.—(1) A financing statement or financing change statement prepared in accordance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980 and the regulations thereunder, as they read immediately before the repeal of that Act, shall be accepted for registration if it is received by the registrar or a branch registrar within thirty days of the day this section comes into force.

Use of old forms

(2) Every financing statement or financing change statement received by the registrar or a branch registrar before the repeal of the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, or received under subsection (1) expires on the expiry of the third anniversary of its registration or, in the case of a financing change statement that does not extend a period of registration, with the expiry of the financing statement to which it relates and may be renewed under this Act. *New.*

Period of registration

83. Section 26 of the *Execution Act*, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

26.—(1) Where an execution debtor is a secured party and the security interest is perfected by registration under the *Personal Property Security Act*, upon payment of the proper fees, a sheriff may seize the security interest by registering a financing change statement under that Act in the form prescribed thereunder recording the seizure of the security interest and the sheriff, after registering the financing change statement, may sell the execution debtor's security interest.

Taking security interests in personal property in execution
R.S.O. 1980, c. 375

(2) Upon the registration of the financing change statement referred to in subsection (1), the security interest of the execution debtor is bound by the execution, and the registration is notice of the execution and seizure to all persons who may thereafter acquire an interest in the security agreement or the property subject to the security interest and the rights of the sheriff and the execution creditor have priority over the rights of all persons who subsequently acquire an interest in the security agreement.

Effect of registration

(3) The debtor under a security agreement is not affected by a seizure under this section unless a notice of the seizure has been served upon the debtor, and any payment made by

Service of notice on debtor

the debtor under the security agreement to the secured party before such service shall be valid.

Payment to
sheriff

(4) After the debtor has been served with a notice of seizure under subsection (3), the debtor shall pay to the sheriff all money then payable and, as it becomes due, all money that may become payable under the security agreement so far as may be necessary to satisfy the execution.

Payments
made after
notice

(5) Any payment made to the secured party after service of the notice of seizure under subsection (3) or after actual knowledge of the seizure is void as against the sheriff and the execution creditor.

When seizure
no longer
effective

R.S.O. 1980,
c. 375

(6) Where a financing change statement has been registered under subsection (2) and the execution has expired or is satisfied, set aside or withdrawn, the sheriff shall register a financing change statement under the *Personal Property Security Act* in the form prescribed thereunder recording the fact that the seizure of the security interest is no longer effective.

Rights and
remedies of
sheriff

(7) In addition to the remedies provided in this Act, upon seizure of the security interest, the sheriff has all the rights and remedies of the execution debtor under the security agreement and the *Personal Property Security Act*, and the sheriff is entitled to a bond of indemnity sufficient to indemnify against all costs and expenses to be incurred by the sheriff in the enforcement of the security agreement.

Transition

1988, c. ...

(8) On and after the day sections 68 and 69 of the *Personal Property Security Act, 1988* come into force, the references to the *Personal Property Security Act* in subsections (1), (6) and (7) shall be deemed to be references to the *Personal Property Security Act, 1988*.

Repeals

84.—(1) The following Acts are repealed:

1. The *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980.
2. The *Personal Property Security Amendment Act, 1981*, being chapter 2.
3. The *Personal Property Security Amendment Act, 1981 (No. 2)*, being chapter 58.
4. The *Bills of Sale Act*, being chapter 43 of the Revised Statutes of Ontario, 1980.

5. The *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980.

(2) No sale of goods to which the *Bills of Sale Act* applied before its repeal shall be void for failure to comply with that Act. Transition
R.S.O. 1980,
c. 43

(3) Subsection (2) does not affect the rights acquired by any person from a judgment or order of any court before the day this Act comes into force or affect the outcome of any litigation commenced on or before the 8th day of June, 1988. Idem

85. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

86. The short title of this Act is the *Personal Property Security Act, 1988*. Short title

Bill 151

An Act to revise the Personal Property Security Act and to repeal and amend certain other Acts related to Personal Property

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading June 8th, 1988

2nd Reading March 1st, 1989

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The Bill is based on the recommendations of the Advisory Committee to the Minister of Consumer and Commercial Relations which were set out in the Report published by the Ministry in June, 1984 and in the Supplementary Report published in January, 1986. Among the features of the Bill are the following:

1. The law related to mortgages, charges and assignments whose registration is provided for under the *Corporation Securities Registration Act* (C.S.R.A.) will be integrated into the law related to other types of security agreements (sections 2, 78, 79, 80, 81). The C.S.R.A. will be repealed upon proclamation by the Lieutenant Governor (section 84). A notice of all undischarged C.S.R.A. registrations will be recorded in the personal property security registration system and provision will be made for recording changes of debtor names and other types of specified changes (section 78).
2. The Act will apply to the Crown and Crown agencies (section 3).
3. Money is treated as a separate class of property (section 1, clause 22 (f) and clause 29 (b)).
4. Registration will perfect a security interest in all types of collateral (section 23).
5. The general priority rules which apply to security interests have been clarified. A security interest perfected by registration will have priority over another security interest perfected by a different method as long as the registration occurred before the other security interest was perfected (subsection 30 (1)).
6. A seller who finances the purchase of goods and reserves a security interest therein will rank ahead of a competing secured party who also finances the purchase (subsection 33 (3)).
7. The thirty-day time period for registration for the purposes of perfection in the present *Personal Property Security Act* has been eliminated.
8. The present fixed three-year registration period will be replaced with a variable period. There will be a maximum period of five years for registrations and renewals where the collateral is or includes consumer goods (clause 51 (b)). There will be no maximum period for registrations relating to other types of collateral (clause 51 (c)).
9. Secured parties will be required to register a discharge of a registration relating to consumer goods within thirty days after all the obligations under the security agreement have been performed or forgiven (subsection 57 (1)).
10. Where the collateral is other than consumer goods, one financing statement may perfect security interests created or provided for in more than one security agreement between the same parties (subsection 45 (4)).
11. The validity of a registration will depend on whether or not a reasonable person is likely to be misled materially by an error or omission (subsection 46 (4)).
12. A secured party will be required to deliver a copy of a registered financing statement or financing change statement or a verification statement to the debtor within thirty days after the date of registration (subsection 46 (6)).
13. The scope of The Personal Property Security Assurance Fund will be expanded to cover claims for loss resulting from errors or omissions in the recording of notices of undischarged C.S.R.A. registrations and repair and storage lien registrations (subsection 44 (4)). A limit of \$1,000,000 will be set for all claims

under any one security agreement (subsection 44 (20)). A new administrative procedure will be established for the resolution of claims (subsections 44 (8) to (12)).

14. The definition of "secured party" has been expanded to include receivers and receivers and managers for the purposes of enforcement of the security agreement (section 1). Specific provisions related to receivers and receivers and managers are included in the Bill (subsection 60 (2)).
15. The courts are given much broader authority to give orders and directions concerning matters that arise under the Act, including the power to make orders directing compliance with section 17, subsections 34 (3) and 35 (4) and Part V as well as the power to relieve parties from compliance with these provisions (subsection 67 (1)).
16. The *Bills of Sale Act* will be repealed (section 84).

Bill 151**1988**

**An Act to revise the Personal Property Security Act
and to repeal and amend certain other Acts
related to Personal Property**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“accessions” means goods that are installed in or affixed to other goods;

“account” means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;

“chattel paper” means one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods;

“collateral” means personal property that is subject to a security interest;

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“debtor” means a person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes,

- (a) an assignor of an account or chattel paper, and
- (b) a transferee of or successor to a debtor’s interest in collateral;

“default” means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

“document of title” means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee’s possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

“equipment” means goods that are not inventory or consumer goods;

“financing change statement” means a document in the form prescribed for a financing change statement;

“financing statement” means a document in the form prescribed for a financing statement;

“future advance” means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;

“goods” means tangible personal property other than chattel paper, documents of title, instruments, money and securities, and includes fixtures, growing crops, the unborn young of animals, timber to be cut, and minerals and hydrocarbons to be extracted;

“instrument” means,

- (a) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or

R.S.C. 1970,
c. B-5

- (b) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder,

but does not include a writing that constitutes part of chattel paper, a document of title or a security;

“intangible” means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments, money or securities;

“inventory” means goods that are held by a person for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;

“money” means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency;

“obligation secured”, for the purposes of determining the amount payable under a lease, means the amount contracted to be paid as rent under the lease and all other amounts that have or may become payable under the lease, including the amount, if any, required to be paid by the lessee to obtain full ownership of the collateral, as of the relevant date, less any amounts paid;

“personal property” means chattel paper, documents of title, goods, instruments, intangibles, money and securities and includes fixtures but does not include building materials that have been affixed to real property;

“prescribed” means prescribed by the regulations;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with collateral or the proceeds therefrom, and includes any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom;

“purchase” includes taking by sale, lease, negotiation, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in personal property;

“purchase-money security interest” means,

- (a) a security interest taken or reserved in collateral to secure payment of all or part of its price, or

- (b) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral to the extent that the value is applied to acquire the rights,

but does not include a transaction of sale by and lease back to the seller;

“purchaser” means a person who takes by purchase;

“registrar” means the registrar of personal property security;

“regulations” means the regulations made under this Act;

“secured party” means a person who holds a security interest for the person’s own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest and for the purposes of sections 17, 59 to 64, 66 and 67 includes a receiver or receiver and manager;

“security” means a document that is,

- (a) issued in bearer, order or registered form,
- (b) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (c) one of a class or series or by its terms is divisible into a class or series of documents, and
- (d) evidence of a share, participation or other interest in property or in an enterprise or is evidence of an obligation of the issuer,

and includes an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act*, 1982; 1982, c. 4

“security agreement” means an agreement that creates or provides for a security interest and includes a document evidencing a security interest;

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or

performance of an obligation, the interest of a transferee of an account or chattel paper;

“trust indenture” means any security agreement by the terms of which a body corporate, with or without share capital and wherever or however incorporated,

- (a) issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and
- (b) appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for;

“value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. R.S.O. 1980, c. 375, s. 1, *amended*.

Fungibles

(2) For the purposes of this Act, fungible goods and fungible securities are goods or securities, as the case may be, of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement. *New*.

PART I

APPLICATION AND CONFLICT OF LAWS

Application
of Act,
general

2. Subject to subsection 4 (1), this Act applies to,

- (a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,
 - (i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and
 - (ii) an assignment, lease or consignment that secures payment or performance of an obligation; and
- (b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation. R.S.O. 1980, c. 375, s. 2, *amended*.

3. This Act applies to the Crown and every agency of the Crown. *New.* Application to Crown

4.—(1) This Act does not apply, Non-application of Act

(a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;

(b) to a deemed trust arising under any Act, except as provided in subsection 30 (7);

(c) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

(d) to a transaction under the *Pawnbrokers Act*; R.S.O. 1980, c. 372

(e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;

(f) to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies; R.S.O. 1980, c. 33

(g) to a sale of accounts or chattel paper as part of a transaction to which the *Bulk Sales Act* applies; R.S.O. 1980, c. 52

(h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1980, c. 375, s. 3 (1); 1981, c. 58, s. 1, amended.

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. Rights under R.S.O. 1980, c. 462 not affected

5.—(1) Except as otherwise provided in this Act, the validity, perfection and effect of perfection or non-perfection of, Conflict of laws, location of collateral

- (a) a security interest in goods; and
- (b) a possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

Perfection of
security
interest
continued

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Ontario continues perfected in Ontario if a financing statement is registered in Ontario before the goods are brought in or if it is perfected in Ontario,

- (a) within sixty days after the goods are brought in;
- (b) within fifteen days after the day the secured party receives notice that the goods have been brought in; or
- (c) before the date that perfection ceases under the law of the jurisdiction in which the goods were situated at the time the security interest attached,

whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of those goods who acquires the goods from the debtor as consumer goods in good faith and without knowledge of the security interest and before the security interest is perfected in Ontario.

Perfection
otherwise

(3) Subsection (2) does not apply so as to prevent the perfection of a security interest after the expiry of the time limit set out in that subsection.

Perfection in
Ontario

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before being brought into Ontario, the security interest may be perfected under this Act.

Revendi-
cation

(5) Where goods brought into Ontario are subject to an unpaid seller's right to revendicate or to resume possession of the goods under the law of the Province of Quebec or any other jurisdiction, the right becomes unenforceable in Ontario twenty days after the goods are brought into Ontario unless the seller registers a financing statement or repossesses the goods within that twenty-day period. *New.*

6.—(1) Subject to section 7, if the parties to a security agreement creating a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to that other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attached, the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

Goods
brought into
province

(2) If the other jurisdiction mentioned in subsection (1) is not Ontario, and the goods are later brought into Ontario, the security interest in the goods is deemed to be one to which subsection 5 (2) applies if it was perfected under the law of the jurisdiction to which the goods were removed. *New.*

Perfection in
province

7.—(1) The validity, perfection and effect of perfection or non-perfection,

Conflict of
laws, location
of debtor

(a) of a security interest in,

(i) an intangible, or

(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and

(b) of a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

(2) If a debtor changes location to Ontario, a perfected security interest referred to in subsection (1) continues perfected in Ontario if it is perfected in Ontario,

Change of
location

(a) within sixty days from the day the debtor changes location;

(b) within fifteen days from the day the secured party receives notice that the debtor has changed location; or

(c) prior to the day that perfection ceases under the law of the jurisdiction referred to in subsection (1),

whichever is the earliest.

Idem

(3) A security interest that is not perfected as provided in subsection (2) may be otherwise perfected under this Act.

Location of debtor

(4) For the purpose of this section, a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence. *New.*

Procedural and substantive issues

8.—(1) Despite sections 5, 6 and 7,

- (a) procedural matters affecting the enforcement of the right of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;
- (b) procedural matters affecting the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and
- (c) substantive matters affecting the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

Deemed perfection

(2) For the purposes of this Part, a security interest shall be deemed to be perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest that is enforceable against the debtor and third parties. *New.*

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness of security agreement

9.—(1) Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. R.S.O. 1980, c. 375, s. 9.

Idem

(2) A security agreement is not unenforceable against a third party by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless the third party is actually misled by the defect, irregularity, omission or error. *New.*

(3) Without restricting the generality of subsection (2), the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described. *New.* Idem

10. Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if the secured party fails to do so after a request by the debtor, the District Court, on the application of the debtor, may order the delivery of such a copy to the debtor. R.S.O. 1980, c. 375, s. 11, *amended.* Delivery of copy of agreement

11.—(1) A security interest is not enforceable against a third party unless it has attached. Attachment required

(2) A security interest, including a security interest in the nature of a floating charge, attaches when, When security interest attaches

- (a) the secured party or a person on behalf of the secured party other than the debtor or the debtor's agent obtains possession of the collateral or when the debtor signs a security agreement that contains a description of the collateral sufficient to enable it to be identified;
- (b) value is given; and
- (c) the debtor has rights in the collateral,

unless the parties have agreed to postpone the time for attachment, in which case the security interest attaches at the agreed time. R.S.O. 1980, c. 375, ss. 10, 12 (1), *amended.*

(3) For the purpose of subsection (2), the debtor has no rights in, Idem

- (a) crops until they become growing crops;
- (b) fish until they are caught;
- (c) the young of animals until they are conceived;
- (d) minerals or hydrocarbons until they are extracted; or
- (e) timber until it is cut. R.S.O. 1980, c. 375, s. 12 (2), *amended.*

After-
acquired
property

12.—(1) A security agreement may cover after-acquired property.

Exception

(2) No security interest attaches under an after-acquired property clause in a security agreement,

- (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value. R.S.O. 1980, c. 375, s. 13, *amended*.

Future
advances

13. A security agreement may secure future advances. R.S.O. 1980, c. 375, s. 15, *amended*.

Agreement
not to assert
defence
against
assignee

14.—(1) An agreement by a debtor not to assert against an assignee any claim or defence that the debtor has against the debtor's seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against a holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada). R.S.O. 1980, c. 375, s. 16.

R.S.C. 1970,
c. B-5

Non-
application
R.S.O. 1980,
c. 87, s. 31
Seller's
warranties

(2) Subsection (1) does not apply to an assignment to which section 31 of the *Consumer Protection Act* applies. *New*.

15. Where a seller retains a purchase-money security interest in goods,

- (a) the *Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and
- (b) except as provided in section 14, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1980, c. 375, s. 17, *amended*.

R.S.O. 1980,
c. 462

Acceleration
provisions

16. Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the agreement shall be construed to mean that the secured party may accelerate payment or per-

formance only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy. R.S.O. 1980, c. 375, s. 18, *amended*.

17.—(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties. R.S.O. 1980, c. 375, s. 19 (1).

Care of collateral

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

Idem, rights and duties of secured party

- (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the collateral and in its preservation, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured;
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it. R.S.O. 1980, c. 375, s. 19 (2), *amended*.

(3) A secured party is liable for any loss or damage caused by the secured party's failure to meet any obligations imposed by subsection (1) or (2), but does not lose the security interest in the collateral.

Liability for loss

(4) A secured party may use the collateral,

Use of collateral

- (a) in the manner and to the extent provided in the security agreement;
- (b) for the purpose of preserving the collateral or its value; or
- (c) pursuant to an order of,
 - (i) the court before which a question relating thereto is being heard, or
 - (ii) the District Court upon application by the secured party.

Idem

- (5) A secured party,
 - (a) is liable for any loss or damage caused by the secured party's use of the collateral otherwise than as authorized by subsection (4); and
 - (b) is subject to being ordered or restrained as provided in subsection 67 (1). R.S.O. 1980, c. 375, s. 19 (3-5).

Statements of
account

18.—(1) A person who is a debtor or judgment creditor or who has an interest in the collateral or who is the authorized representative of such a person, by a notice in writing given to the secured party and containing an address for reply, may require the secured party to furnish to the person any one or more of,

- (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof as of the date specified in the notice;
- (b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral or a part thereof as specified in a list attached to the notice;
- (c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof;
- (d) a true copy of the security agreement; or
- (e) sufficient information as to the location of the security agreement or a true copy thereof so as to enable inspection of the security agreement or copy.

(2) Clauses (1) (a), (b) and (c) do not apply where the secured party is the trustee under a trust indenture.

Exception,
indenture
trustee

(3) The secured party, on the reasonable request of a person entitled to receive a true copy of the security agreement under clause (1) (d), shall permit the person or the person's authorized representative to inspect the security agreement or a true copy thereof during normal business hours at the location disclosed under clause (1) (e).

Inspection of
security
agreement

(4) If the secured party claims a security interest in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may so indicate in lieu of approving or correcting the list of such collateral as required by clause (1) (b).

Idem

(5) Subject to the payment of any charge required under subsection (7), the secured party shall answer a notice given under subsection (1) within fifteen days after receiving it, and, if without reasonable excuse,

Time for
compliance
with notice,
liability for
failure to
answer

(a) the secured party does not answer within such fifteen-day period, the secured party is liable for any loss or damage caused thereby to any person who is entitled to receive information under this section; or

(b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

(6) Where the person receiving a notice under subsection (1) no longer has a security interest in the collateral, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse the person fails to do so or the answer is incomplete or incorrect, the person is liable for any loss or damage caused thereby to any person entitled to receive information under this section.

Successors in
interest

(7) The secured party may require payment in advance of the charge prescribed for each statement or copy of the security agreement required under subsection (1), but the debtor is entitled to a statement without charge once in every six months.

Charges

(8) On an application to the District Court, the court, by order, may,

Court order

- (a) exempt, in whole or in part, the secured party from complying with a notice given under subsection (1), or a request under subsection (3), if the person giving the notice, not being the debtor, does not establish to the satisfaction of the court that the person has an interest in the collateral or that the person is a judgment creditor;
- (b) extend the time for complying with the notice given under subsection (1);
- (c) require the secured party to comply with a notice given under subsection (1) or a request under subsection (3); or
- (d) make such other order as it considers just.

Liability

(9) An order made under clause (8) (b) or (c) does not affect the liability of the secured party under subsection (5).

Extended
time for
compliance

(10) Despite subsection (9), where the secured party applies to the District Court for an extension of time under clause (8) (b) within fifteen days of receiving a notice under subsection (1) and the court makes an order extending the time for compliance, the secured party shall answer the notice within the time as extended and not within the time as required by subsection (5) and, if without reasonable excuse,

- (a) the secured party fails to answer the notice within the time as extended, the secured party is liable for any loss or damage caused thereby to any person entitled to receive information under this section; or
- (b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer. R.S.O. 1980, c. 375, s. 20, *amended*.

PART III

PERFECTION AND PRIORITIES

Perfection

19. A security interest is perfected when,

- (a) it has attached; and
- (b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence. R.S.O. 1980, c. 375, s. 21.

20.—(1) Except as provided in subsection (3), until perfected, a security interest, Unperfected security interests

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who assumes control of the collateral through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the *Creditors' Relief Act* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has assumed control, or the proceeds of such property; R.S.O. 1980, c. 103

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, securities, instruments or goods is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.

(2) The rights of a person,

Idem

(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,

(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or

(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect.

Purchase-
money
security
interest

(3) A purchase-money security interest that is perfected by registration,

(a) in collateral, other than an intangible, before or within ten days after,

(i) the debtor obtains possession of the collateral,
or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is earlier; or

(b) in an intangible before or within ten days after the attachment of the security interest in the intangible,

has priority over,

(c) an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b); and

(d) the interest of a transferee of collateral that forms all or part of a sale in bulk within the meaning of the *Bulk Sales Act*. R.S.O. 1980, c. 375, s. 22, *amended*.

R.S.O. 1980,
c. 52

Continuity of
perfection

21.—(1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment. R.S.O. 1980, c. 375, s. 23.

Perfection by
possession or
repossession

22. Possession or repossession of the collateral by the secured party, or on the secured party's behalf by a person

other than the debtor or the debtor's agent, perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) negotiable documents of title; and
- (f) money,

but only while it is actually held as collateral. R.S.O. 1980, c. 375, s. 24, *amended*.

23. Registration perfects a security interest in any type of collateral. *New.* Perfection by registration

24.—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value secured by a written security agreement. R.S.O. 1980, c. 375, s. 26 (1). Temporary perfection

(2) A security interest perfected by possession in, Idem

(a) an instrument or a security that a secured party delivers to the debtor for,

(i) ultimate sale or exchange,

(ii) presentation, collection or renewal, or

(iii) registration of transfer; or

(b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,

(i) ultimate sale or exchange,

(ii) loading, unloading, storing, shipping or transshipping, or

- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor. R.S.O. 1980, c. 375, s. 26 (2), *amended*.

Idem

- (3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest. R.S.O. 1980, c. 375, s. 26 (3).

Perfecting as to proceeds

25.—(1) Where collateral gives rise to proceeds, the security interest therein,



- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized the dealing with the collateral; and



- (b) extends to the proceeds. R.S.O. 1980, c. 375, s. 27 (1), *amended*.

Idem

(2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective or, where the security interest is perfected with respect to the proceeds by any other method permitted under this Act, for so long as the conditions of such perfection are satisfied.

Idem

(3) A security interest in proceeds is a continuously perfected security interest if the interest in the collateral was perfected when the proceeds arose.

Idem

(4) If a security interest in collateral was perfected otherwise than by registration, the security interest in the proceeds becomes unperfected ten days after the debtor acquires an interest in the proceeds unless the security interest in the proceeds is perfected under this Act.

Motor vehicles classified as consumer goods

(5) Where a motor vehicle, as defined in the regulations, is proceeds, a person who buys or leases the vehicle as consumer goods in good faith takes it free of any security interest therein that extends to it under clause (1) (b) even though it is perfected under subsection (2) unless the secured party has registered a financing change statement that sets out the vehicle identification number in the designated place. *New*.

26.—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto. R.S.O. 1980, c. 375, s. 28 (1). Perfecting as to goods held by a bailee

(2) A security interest in collateral in the possession of a person, other than the debtor, the debtor's agent or a bailee mentioned in subsection (1), is perfected by, Idem

- (a) issuance of a document of title in the name of the secured party;
- (b) possession on behalf of the secured party; or
- (c) registration. R.S.O. 1980, c. 375, s. 28 (2), *amended*.

27.—(1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if, Goods returned or repossessed

- (a) the buyer or lessee has taken free of the security interest under clause 25 (1) (a) or subsection 28 (1) or (2);
- (b) the goods are returned to or repossessed by the debtor; and
- (c) the obligation secured remains unpaid or unperformed.

(2) Where a security interest in goods reattaches under subsection (1), then any question as to, Idem

- (a) whether or not the security interest in the goods is perfected; and
- (b) the time of its perfection or registration,

shall be determined as if the goods had not been sold or leased.

(3) If a sale or lease of goods creates an account or chattel paper and, Where sale or lease creates an account or chattel paper

- (a) the account or chattel paper is transferred to a secured party; and

- (b) the goods are returned to or repossessed by the seller or lessor,

the transferee has a security interest in the goods.

Temporary
perfection

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten days after the return or repossession of the goods unless the transferee registers a financing statement in respect of the security interest in, or takes possession of, the goods before the expiry of that period.

Transferee of
account

(5) Where a transferee of an account has a perfected security interest in goods under subsections (3) and (4), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the account was perfected.

Transferee of
chattel paper

(6) Where a transferee of chattel paper has a perfected security interest in goods under subsections (3) and (4),

- (a) as between the transferee and the holder of a perfected security interest that attached under subsection (1), the person who had priority as to the chattel paper also has priority as to the goods; and
- (b) as between the transferee and a person other than the holder of a perfected security interest that attached under subsection (1), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the chattel paper was perfected. R.S.O. 1980, c. 375, s. 29, *amended*.

Transactions
in ordinary
course of
business,
buyers of
goods

28.—(1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

Idem, lessors
of goods

(2) A lessee of goods from a lessor who leases the goods in the ordinary course of business holds the goods, to the extent of the lessee's rights under the lease, free from any security interest therein given by the lessor even though it is perfected

and the lessee knows of it, unless the lessee also knew that the lease constituted a breach of the security agreement.

(3) A purchaser of chattel paper who takes possession of it in the ordinary course of business has, to the extent that the purchaser gives new value, priority over any security interest in it,

Idem,
purchasers of
chattel paper

(a) that was perfected by registration if the purchaser did not know at the time of taking possession that the chattel paper was subject to a security interest; or

(b) that has attached to proceeds of inventory under section 25, whatever the extent of the purchaser's knowledge.

↓
(4) A purchaser of collateral that is an instrument or negotiable document of title has priority over any security interest therein perfected by registration or temporarily perfected under section 23 or 24 if the purchaser,

Idem,
purchasers of
instruments

(a) gave value for the interest purchased;

(b) purchased the collateral without knowledge that it was subject to a security interest; and

(c) has taken possession of the collateral. ▲

↓
(5) Where a motor vehicle, as defined in the regulations, is sold other than in the ordinary course of business of the seller and the motor vehicle is classified as equipment of the seller, the buyer takes it free from any security interest therein given by the seller even though it is perfected by registration unless the vehicle identification number of the motor vehicle is set out in the designated place on a registered financing statement or financing change statement or unless the buyer knew that the sale constituted a breach of the security agreement.

Motor
vehicles,
transaction
other than in
ordinary
course

↓
(6) A *bona fide* purchaser of a security, whether in the form of a security certificate or an uncertificated security, who has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under section 23 or 24.


Securities

(7) A purchaser of a security, whether in the form of a security certificate or an uncertificated security, who purchases the security in the ordinary course of business and has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under sec-

Idem

tion 23 or 24, even though the purchaser knows of the security interest, if the purchaser did not know the purchase constituted a breach of the security agreement.

Definitions

(8) For the purposes of subsections (6) and (7), “*bona fide purchaser*”, “*purchaser*”, “*security*”, “*security certificate*” and “*uncertificated security*” have the same meaning as in sections 53 and 85 of the *Business Corporations Act, 1982*.
New. 

1982, c. 4

Negotiable
instruments,
etc.

29. The rights of a person who is,

(a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada); or

(b) a transferee from the debtor of money,

are to be determined without regard to this Act. R.S.O. 1980, c. 375, s. 31 (1), *amended*.

Priorities,
general rule

30.—(1) If no other provision of this Act is applicable, the following priority rules apply to security interests in the same collateral:

1. Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.
2. Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,
 - i. the security interest perfected by registration has priority over the other security interest if the registration occurred before the perfection of the other security interest, and
 - ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.
3. Where priority is to be determined between security interests perfected otherwise than by registration,

R.S.C. 1970,
c. B-5

priority shall be determined by the order of perfection.

4. Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment. R.S.O. 1980, c. 375, s. 35 (1), *amended*.

(2) For the purpose of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration. R.S.O. 1980, c. 375, s. 35 (2). Idem

(3) Subject to subsection (4), where future advances are made while a security interest is perfected, the security interest has the same priority with respect to each future advance as it has with respect to the first advance. Future advances

(4) A future advance under a perfected security interest is subordinate to the rights of persons mentioned in subclauses 20 (1) (a) (ii) and (iii) if the advance was made after the secured party received written notification of the interest of any such person unless, Exception

- (a) the secured party makes the advance for the purpose of paying reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and its preservation; or
- (b) the secured party is bound to make the advance, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(5) For the purpose of subsection (1), the date for registration or perfection as to collateral is also the date for registration or perfection as to proceeds. Proceeds

(6) Where a security interest that is perfected by registration becomes unperfected and is again perfected by registration, the security interest shall be deemed to have been continuously perfected from the time of first perfection except that if a person acquired rights in all or part of the collateral during the period when the security interest was unperfected, the registration shall not be effective as against the person who acquired the rights during such period. *New*. Reperfected security interests

Deemed
trusts

R.S.O. 1980,
c. 137
1987, c. 35

↓
(7) A security interest in an account or inventory and its proceeds is subordinate to the interest of a person who is the beneficiary of a deemed trust arising under the *Employment Standards Act* or under the *Pension Benefits Act, 1987*.

Exception

(8) Subsection (7) does not apply to a perfected purchase-money security interest in inventory or its proceeds. ▲

Liens for
materials and
services

31. Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that the person has in respect of the materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority. R.S.O. 1980, c. 375, s. 32, *amended*.

Crops

32.—(1) A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise even though the person giving value has notice of the earlier security interest.

Idem

(2) Where more than one perfected security interest is given priority by subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced. R.S.O. 1980, c. 375, s. 34 (1), *amended*.

Purchase-
money
security
interest,
inventory

33.—(1) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor, if,

- (a) the purchase-money security interest was perfected at the time,
 - (i) the debtor obtained possession of the inventory, or
 - (ii) a third party, at the request of the debtor, obtained or held possession of the inventory,

whichever is earlier;

- (b) before the debtor receives possession of the inventory, the purchase-money secured party gives notice in writing to every other secured party who has registered a financing statement in which the collateral is classified as inventory before the date of registration by the purchase-money secured party; and
- (c) the notice referred to in clause (b) states that the person giving it has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

(2) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest, Purchase-money security interests other than inventory

- (a) in the case of collateral, other than an intangible, was perfected before or within ten days after,
 - (i) the debtor obtained possession of the collateral as a debtor, or
 - (ii) a third party, at the request of the debtor, obtained or held possession of the collateral,

whichever is earlier; or

- (b) in the case of an intangible, was perfected before or within ten days after the attachment of the purchase-money security interest in the intangible. R.S.O. 1980, c. 375, s. 34 (2, 3), *amended*.

(3) Where more than one purchase-money security interest is given priority by subsections (1) and (2), the purchase-money security interest, if any, of the seller has priority over any other purchase-money security interest given by the same debtor. *New.* Priority of seller's purchase-money security interest

34.—(1) A security interest in goods that attached,

Fixtures

- (a) before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or
- (b) after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered inter-

est in the real property at the time the security interest in the goods attached and who has not consented in writing to the security interest or disclaimed an interest in the fixture.

Exceptions

(2) A security interest mentioned in subsection (1) is subordinate to the interest of,

- (a) a subsequent purchaser for value of an interest in the real property; or
- (b) a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances,

if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with section 54.

Removal of collateral

(3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provisions of this Act respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

Security

(4) A person entitled to reimbursement under subsection (3) may refuse permission to remove the fixture until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 36 (1-4), *amended*.

Notice

(5) A secured party who has the right to remove a fixture from real property shall serve, on each person who appears by the records of the proper land registry office to have an interest in the real property, a notice in writing of the secured party's intention to remove the fixture containing,

- (a) the name and address of the secured party;
- (b) a description of the fixture to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligation secured by the security interest of the secured party;

- (d) a description of the real property to which the fixture is affixed sufficient to enable the real property to be identified; and
- (e) a statement of intention to remove the fixture unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(6) The notice mentioned in subsection (5) shall be served in accordance with section 68 or by registered mail addressed to the person to whom notice is to be given at the address furnished under section 166 of the *Land Titles Act* or section 37 of the *Registry Act*, or where no such address has been furnished, addressed to the solicitor whose name appears on the registered instrument by which the person appears to have an interest. *New.*

Idem

R.S.O. 1980,
cc. 230, 445

(7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fixture has been removed from the real property by the secured party in accordance with subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 36 (5), *amended.*

Retention of
collateral

35.—(1) Subject to subsections (2) and (3) of this section and section 37, a security interest in goods that attached,

Accessions

- (a) before the goods became an accession, has priority as to the accession over the claim of any person in respect of the whole; and
- (b) after the goods became an accession, has priority as to the accession over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole at the date the security interest attached to the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(2) A security interest referred to in subsection (1),

Exceptions

- (a) is subordinate to the interest of,
 - (i) a subsequent buyer of an interest in the whole, and

- (ii) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances,

if the subsequent sale or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected; and

- (b) is subordinate to the interest of a creditor of the debtor who assumes control of the whole through execution, attachment, garnishment, charging order, equitable execution or other legal process, if control is assumed before the security interest is perfected. R.S.O. 1980, c. 375, s. 37 (1, 2), *amended*.

Idem

(3) Despite clause (2) (b), a purchase-money security interest in an accession that is perfected before or within ten days after the debtor obtains possession of the accession has priority over the interest of a creditor referred to in that clause. *New*.

Removal of collateral

(4) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Act respecting default, remove the accession from the whole if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the accession or by the necessity for replacement.

Security

(5) A person entitled to reimbursement under subsection (4) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 37 (3), *amended*.

Notice

(6) The secured party who has the right to remove an accession from the whole shall serve, on each person known to the secured party as having an interest in the other goods and on any person with a security interest in such other goods perfected by registration against the name of the debtor or against the vehicle identification number of such other goods, if such number is required for registration, a notice in writing of the secured party's intention to remove the accession containing,

- (a) the name and address of the secured party;

- (b) a description of the accession to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligations secured by the security interest of the secured party;
- (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accession from the whole unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(7) The notice mentioned in subsection (6) shall be served in accordance with section 68 at least ten days before the accession is removed. *New.*

Idem

(8) A person having an interest in the whole that is subordinate to a security interest in the accession may, before the accession has been removed by the secured party in accordance with subsection (3), retain the accession upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 37 (4), *amended*.

Retention of collateral

36.—(1) A security interest in a right to payment under a lease of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the lessor's interest in the lease or in the real property thereby demised if the interest, or notice thereof, of the person is registered in the proper land registry office before the interest, or notice thereof, of the secured party is registered in the proper land registry office.

Real property payments, rents

(2) A security interest in a right to payment under a mortgage or charge of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the mortgagee's or chargee's interest in the mortgage or charge if the interest of the person is registered in the proper land registry office before a notice of the security interest is registered in the proper land registry office. 1981, c. 58, s. 2.

Mortgages

37. A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank

Commingled goods

equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. R.S.O. 1980, c. 375, s. 38.

Subordina-
tion

38. A secured party may, in the security agreement or otherwise, subordinate the secured party's security interest to any other security interest and such subordination is effective according to its terms. R.S.O. 1980, c. 375, s. 39, *amended*.

Alienation of
rights of a
debtor

39. The rights of a debtor in collateral may be transferred voluntarily or involuntarily despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise. R.S.O. 1980, c. 375, s. 33.

Person
obligated on
an account
or on chattel
paper

40.—(1) Unless a person obligated on an account or on chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee are subject to,

- (a) all the terms of the contract between the person and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the person against the assignor that accrued before the person received notice of the assignment.

Idem

(2) A person obligated on an account or on chattel paper may pay the assignor until the person receives notice, reasonably identifying the relevant rights, that the account or chattel paper has been assigned, and, if requested by the person, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if the assignee does not do so, the person may pay the assignor. R.S.O. 1980, c. 375, s. 40 (1, 2), *amended*.

Modification,
etc., effective
against
assignee

(3) To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's right under or the assignor's ability to perform the contract, is effective against an assignee unless the person obligated on the account or chattel paper has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. *New.*

PART IV

REGISTRATION

41.—(1) A registration system, including a central office and branch offices, shall be maintained for the purposes of this Act and the *Repair and Storage Liens Act, 1989*. R.S.O. 1980, c. 375, s. 41 (1), *amended*. Registration system
1989, c. 17

(2) The central office of the registration system shall be located at or near the City of Toronto. Central office

(3) Branch offices of the registration system shall be established at such places as are designated by the regulations. R.S.O. 1980, c. 375, s. 41 (2, 3). Branch offices

42.—(1) There shall be a registrar of personal property security and a branch registrar for each branch office. Registrar,
branch registrars

(2) The registrar shall be the public servant designated as registrar by the Minister of Consumer and Commercial Relations. Idem

(3) The branch registrars shall be those public servants designated by name or position as branch registrars by the registrar. Idem

(4) The registrar shall have a seal of office in such form as the Lieutenant Governor in Council may by order approve. R.S.O. 1980, c. 375, s. 42, *amended*. Seal of office

(5) No action or other proceeding for damages shall be instituted against the registrar or any person employed in the Ministry of Consumer and Commercial Relations for any act done in good faith in the execution or intended execution of the person's duty under this Act or the *Repair and Storage Liens Act, 1989* or for any alleged neglect or default in the execution in good faith of the person's duty thereunder. Protection from personal liability
1989, c. 17

(6) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* but subject to subsection 44 (18), subsection (5) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (5) to which it would otherwise be subject. Crown Liability
R.S.O. 1980, c. 393

(7) The registrar and each branch registrar may designate one or more public servants to act on his or her behalf. R.S.O. 1980, c. 375, s. 43. Delegation

Certificate of
registrar

43.—(1) Upon the request of any person for a search of the individual debtor name index, business debtor name index or motor vehicle identification number index and upon payment of the prescribed fee, the registrar shall issue a certificate stating,

- (a) whether, at the time mentioned in the certificate, there is registered a financing statement or a financing change statement the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the financing statement or financing change statement as a debtor or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information;
- (b) whether, at the time mentioned in the certificate, there is entered in the central file of the registration system any information required or permitted to be entered by section 78 in which the name with respect to which the inquiry is made is shown as debtor; and
- (c) whether, at the time mentioned in the certificate, there is registered a claim for lien or a change statement under the *Repair and Storage Liens Act, 1989* the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the claim for lien or change statement as an owner or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information.

1989, c. 17

Idem

(2) A certificate issued under subsection (1) is *prima facie* proof of the contents thereof.

Similar
names

(3) A certificate issued under subsection (1) may include information relating to a registered financing statement or financing change statement recorded in the central file of the registration system which sets out in the designated place a debtor name or vehicle identification number which is similar, in the opinion of the registrar, to the name or number with respect to which the inquiry is made.

Certified
copies

(4) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a

certified copy of a registered financing statement or a registered financing change statement.

(5) A certified copy furnished under subsection (4) is *prima facie* proof of the contents of the document so certified. Idem
R.S.O. 1980, c. 375, s. 44, *amended*.

44.—(1) The account in the Consolidated Revenue Fund known as “The Personal Property Security Assurance Fund” is hereby continued. Assurance Fund

(2) The prescribed portion of the fees received under this Act shall be paid into the Assurance Fund. Idem
R.S.O. 1980, c. 375, s. 45 (1), *amended*.

(3) Interest shall be credited to the Assurance Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Assurance Fund at the end of the previous calendar year. Idem
R.S.O. 1980, c. 375, s. 45 (2).

(4) Any person who suffers loss or damage as a result of the person’s reliance upon a certificate of the registrar issued under section 43 that is incorrect because of an error or omission in the operation of the system of registration, recording and production of information under this Part or section 78 or under the *Repair and Storage Liens Act, 1989* is entitled to be paid compensation out of the Assurance Fund so far as the Assurance Fund is sufficient for that purpose, having regard to any claims which have been approved but have not been paid. Entitlement to payment
1989, c. 17

(5) A person claiming to be entitled to payment of compensation out of the Assurance Fund shall file an application with the registrar, setting out the person’s name and address and particulars of the claim. Claims

(6) A claim against the Assurance Fund must be made within one year from the time that the loss or damage giving rise to the claim came to the claimant’s knowledge. Idem

(7) For the purposes of this section, where the holders of debt obligations issued, guaranteed or provided for under a security agreement are represented by a trustee or other person and the trustee or other person has relied upon a certificate of the registrar issued under section 43, all of the holders of the debt obligations shall be deemed to have relied on the certificate, and where a claim is made against the Assurance Idem

Fund, it shall be made by the trustee or other person on behalf of all the holders of such obligations.

Duty of
registrar

(8) The registrar shall determine a claim against the Assurance Fund within ninety days of receiving an application for compensation and,

- (a) where the registrar determines that the claim should not be paid, the registrar shall forthwith advise the claimant of the decision; or
- (b) where the registrar determines that the claimant is entitled to a payment out of the Assurance Fund, the registrar shall make an offer of settlement in satisfaction of the claim,

and the decision or offer of settlement shall be deemed to be confirmed thirty days after the mailing thereof to the claimant unless the claimant requests a hearing under subsection (9).

Hearing

(9) Where the registrar makes a decision under clause (8) (a) or an offer of settlement under clause (8) (b) that is for less than the full amount of the claim, the claimant, within thirty days from the day that the decision or offer is mailed to the claimant, may request the Director of Titles appointed under the *Land Titles Act* to hold a hearing to determine the claimant's entitlement to compensation and the request shall be in writing.

R.S.O. 1980,
c. 230

Idem

(10) As soon as possible after receiving a request under subsection (9), the Director of Titles or, where a person has been appointed under subsection (11), the person so appointed shall hold a hearing and decide the claimant's entitlement to compensation and, if he or she considers it appropriate, award costs.

Delegation

(11) The Director of Titles may appoint a person to act on his or her behalf in the hearing of a claim for compensation under this section.

Confirmation
of decision

(12) A decision under subsection (10) shall be deemed to be confirmed at the expiration of thirty days from the date of the mailing of the decision to the claimant, unless a notice of an application under subsection (14) is served on the Director of Titles within that time.

Application
to District
Court

(13) Where the registrar fails to determine a claim for compensation under subsection (8) within ninety days, the District Court, on the application of the claimant made within sixty

days of the expiry of the ninety-day period, may order the payment of such compensation as is set out in the order.

(14) Where the claimant is dissatisfied with a decision under subsection (10), the District Court, on the application of the claimant made within thirty days of the mailing of the decision to the claimant, may order that the decision under subsection (10) be set aside and may order the payment of such compensation as may be set out in the order. Idem

(15) When an offer of settlement has been accepted or the time for an application under subsection (13) or (14) has expired or, where an application has been made, it is disposed of and it is finally determined that the claimant is entitled to payment of compensation out of the Assurance Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay the sum to the claimant out of the Assurance Fund. Payment

(16) Where compensation is paid to a claimant under this section, the registrar is subrogated to the rights of the claimant to the amount so paid against any person indebted to the claimant and whose debt to the claimant was the basis of the loss or damage in respect of which the claimant was paid, and the registrar may enforce those rights by action in court or otherwise in the name of Her Majesty in right of Ontario. Subrogation

(17) The registrar may require a claimant to exhaust the claimant's remedies against the collateral, the debtor and any guarantor and, where the registrar does so, the Assurance Fund is liable for the reasonable costs of the claimant, including solicitor and client costs. Action by claimant

(18) No action or other proceeding for damages shall be instituted against the Crown with respect to any matter in relation to which a claim against the Assurance Fund has been filed. Protection from liability

(19) No claim shall be filed against the Assurance Fund with respect to any matter in relation to which an action or other proceeding for damages has been commenced in any court against the Crown. Idem

(20) The maximum amount that may be paid out of the Assurance Fund with respect to claims related to any one security agreement shall not exceed \$1,000,000 in total. Maximum payable from Assurance Fund

(21) If the total of all claims against the Assurance Fund in respect of a security agreement exceeds \$1,000,000, payments Idem

to claimants shall be made in accordance with the ratio that the amount of the claimant's loss bears to the total amount of the losses of all claimants. *New.*

Registration
of financing
statement

45.—(1) In order to perfect a security interest by registration under this Act, a financing statement shall be registered. R.S.O. 1980, c. 375, s. 47 (1), *amended.*

Consumer
goods

(2) Where the collateral is consumer goods, the financing statement referred to in subsection (1) shall not be registered before the security agreement is signed by the debtor and, where a financing statement is registered in contravention of this subsection, the registration of the financing statement does not constitute registration or perfection under this Act.

Collateral
other than
consumer
goods

(3) Where the collateral is not consumer goods, the financing statement referred to in subsection (1) may be registered before or after the security agreement is signed by the debtor.

Subsequent
security
agreements

(4) Except where the collateral is consumer goods, one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties. *New.*

Place of
registration

46.—(1) A financing statement or financing change statement to be registered under this Act may be tendered for registration,

(a) by delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations. R.S.O. 1980, c. 375, s. 46, *amended.*

Form

(2) Every financing statement and financing change statement to be registered under this Act shall be in the prescribed form.

Classification
of collateral

(3) Except with respect to rights to proceeds, where a financing statement or financing change statement sets out a classification of collateral and also contains words that appear to limit the scope of the classification, then, unless otherwise indicated in the financing statement or financing change statement, the secured party may claim a security interest perfected by registration only in the class as limited. *New.*

Errors, etc.

(4) A financing statement or financing change statement is not invalidated nor is its effect impaired by reason only of an error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by

the error or omission. R.S.O. 1980, c. 375, ss. 4, 47 (5), *amended*.

(5) Registration of a financing statement or financing change statement, Effect of registration

(a) does not constitute constructive notice or knowledge to or by third parties of the existence of the financing statement or financing change statement or of the contents thereof; and

(b) does not create a presumption that this Act applies to the transaction to which the registration relates.

(6) Where a financing statement or financing change statement is registered, the secured party shall deliver to the debtor within thirty days after the date of registration, Copy to debtor

(a) a copy of the registered financing statement or financing change statement; or

(b) a copy of a verification statement in the prescribed form.

(7) Where the secured party without reasonable excuse fails to deliver a copy required under subsection (6), the secured party shall pay \$500 to the debtor which sum is recoverable in the Provincial Court (Civil Division). *New*. Penalty

47.—(1) A financing change statement may be registered where a security interest is perfected by registration and the secured party has assigned the secured party's interest in all or part of the collateral. R.S.O. 1980, c. 375, s. 48 (1), *amended*. Assignment of security interest

(2) Where a security interest has not been perfected by registration and the secured party has assigned the secured party's interest, a financing statement referred to in section 46 may be registered, Idem

(a) naming the assignor as the secured party and subsection (1) applies; or

(b) naming the assignee as the secured party and subsection (1) does not apply. R.S.O. 1980, c. 375, s. 48 (2), *amended*.

(3) Upon the registration of the financing change statement under subsection (1) or the financing statement under sub-

section (2), the assignee becomes a secured party of record. R.S.O. 1980, c. 375, s. 48 (3).

Transfer of collateral

48.—(1) Where a security interest is perfected by registration and the debtor, with the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen days after the transfer is made unless the secured party registers a financing change statement within such fifteen days. R.S.O. 1980, c. 375, s. 49 (1), *amended*.

Idem

(2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of,

- (a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and
- (b) the day the secured party learns the information required to register a financing change statement,

unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

Change of debtor name

(3) Where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days. R.S.O. 1980, c. 375, s. 49 (2), *amended*.

Transferee in possession

(4) Where the debtor's interest in all or part of the collateral is transferred by the debtor without the consent of the secured party and there is one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns of the name of the transferee who has possession of the collateral, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement within thirty days of learning of the name of the transferee who has possession of the collateral and the information required to register a financing change statement and the secured party need not register financing change statements with respect to any intermediate transferee. *New*.

(5) A security interest that becomes unperfected under subsection (1), (2) or (3) may be perfected again by registering a financing change statement at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof. R.S.O. 1980, c. 375, s. 49 (3), *amended*.

Financing
change
statement

(6) Where the Registrar General notifies the registrar that a debtor has changed his or her name and provides the registrar with particulars of a registration under this Act in which the debtor's former name appears as debtor, the registrar shall amend the debtor's name as shown in the central file of the registration system related to the registration.

Notification
by Registrar
General

(7) Subsection (3) does not apply if the registrar, under subsection (6), amends the central file of the registration system,

Idem

- (a) before the secured party learns of the new name of the debtor; or
- (b) within thirty days of the day the secured party learns of the new name of the debtor.

(8) If the registrar, under subsection (6), amends the central file of the registration system more than thirty days after the day the secured party learns of the new name of the debtor, the registrar's amendment shall be deemed to be a financing change statement registered by the secured party at the time the amendment was made. *New*.

Idem

49. A financing change statement may be registered at any time during the registration period of a financing statement,

Amendments

- (a) to correct an error or omission in the registered financing statement or any financing change statement related thereto; or
- (b) to amend the registered financing statement or any financing change statement related thereto where the amendment is not otherwise provided for in this Part. *New*.

50. Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective. R.S.O. 1980, c. 375, s. 51.

Subordi-
nation of
security
interest

Registration
period

51.—(1) A financing statement may be registered for a perpetual period or for such period of years as is set out in the financing statement.

Change of
registration
period

(2) The registration period of a financing statement may be reduced by the registration of a financing change statement under section 49 or extended by the registration of a financing change statement under subsection 52 (1).

Duration of
registration
period

(3) The registration period for a financing statement begins with the time assigned to its registration by the registrar or branch registrar and ends on the earlier of,

- (a) the time the registration is discharged; or
- (b) at the end of the registration period as set out in the financing statement or as changed by subsequent financing change statements.

Effective
period

(4) A financing statement is effective only during its registration period.

Consumer
goods

(5) Despite subsection (1), a financing statement that indicates that the collateral is or includes consumer goods shall be deemed to have a registration period of five years, unless a shorter registration period is indicated on the financing statement or unless the registration period is extended by the registration of a financing change statement under subsection 52 (1).

Idem

(6) Every financing change statement extending the registration period of a financing statement described in subsection (5) shall be deemed to extend the registration period for a five year period that begins at the time of its registration unless a shorter extension is indicated on the financing change statement.

Renewal of
registration

52.—(1) Where a security interest has been perfected by registration, the registration may be extended before the registration ceases to be effective by the registration of a financing change statement.

Reperfection

(2) Where a security interest has been perfected by registration and the registration has ceased to be effective, the security interest may be perfected again by the registration of a financing statement. R.S.O. 1980, c. 375, s. 52, *amended*.

Financing
change
statement

53. The registration of a financing change statement is effective from the time assigned to its registration by the regis-

trar or branch registrar and is effective so long as the registration of the financing statement to which it relates is effective. *New.*

54.—(1) A notice of security interest, in the prescribed form, may be registered in the proper land registry office, where, Notice in land registry office

- (a) the collateral is or includes fixtures or goods that may become fixtures or crops, or minerals or hydrocarbons to be extracted, or timber to be cut; or
- (b) the security interest is a security interest in a right to payment under a lease, mortgage or charge of real property to which this Act applies. 1981, c. 58, s. 4.

(2) Where the collateral is consumer goods, a notice registered under clause (1) (a) or an extension notice registered under subsection (3), as the case may be, shall set out an expiration date, which date shall not be later than the fifth anniversary of the date of registration and the notice or extension notice is effective until the end of the expiration date. Consumer goods, registration period

(3) A registration to which subsection (2) applies may be extended before the end of the registration period by the registration of an extension notice. Idem

(4) A notice registered under subsection (1) may be discharged or partially discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office. Discharge

(5) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of subsection 34 (2) to have knowledge of the security interest. R.S.O. 1980, c. 375, s. 54 (2, 3), *amended*. Effect of registration

(6) Where the collateral is consumer goods and the expiration date set out in a notice registered under clause (1) (a) has passed and an extension notice has not been registered or has expired, the land described in the notice is not affected by any claim under the notice but this subsection does not prevent the registration of a new notice under clause (1) (a). *New.* Loss of claim

55. A registration may be discharged or partially discharged by the registration of a financing change statement discharging or partially discharging the registration. R.S.O. 1980, c. 375, s. 55 (1), *amended*. Discharge or partial discharge of registration

Demand for
discharge,
where
security
interest
existed

56.—(1) Where a financing statement or notice of security interest is registered under this Act, and,

- (a) all the obligations under a security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by a security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54 (4), or both, and the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.

Idem, where
no security
interest
acquired

(2) Where a financing statement or notice of security interest is registered under this Act and the person named in the financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54 (4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be.

Interpretation

(3) For the purposes of subsections (4) and (5), “secured party” includes a person named in a financing statement or notice of security interest as the secured party to whom subsection (2) applies.

Failure to
deliver

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statement or certificate of discharge or partial discharge, or both, as the case may be, required under subsection (1) or (2) within ten days after receipt of a demand therefor, the secured party shall pay \$500 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(5) Upon application to the District Court, the court may,

Security or
payment into
court

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as the court may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement or notice of security interest; or
- (b) order upon any ground that the court considers proper that,
 - (i) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be, or
 - (ii) the land registrar delete any entry in the books of the land registry office related to the notice of security interest or that the land registrar amend the books of the land registry office to indicate that the security interest has been discharged or partially discharged, as the case may be.

(6) Where the person receiving a notice under clause (1) (a) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay \$500 to the person making the demand and any damages resulting from the failure which sum and damages are recoverable in any court of competent jurisdiction. *New.*

Successors in
interest

57.—(1) Within thirty days after all the obligations under a security agreement that creates a security interest in consumer goods have been performed or forgiven, the secured party shall register,

Consumer
goods, duty
of secured
party to
register or
provide
discharge

- (a) a financing change statement discharging the registration if the security interest has been perfected by registration; and
- (b) a certificate of discharge, if a notice of security interest has been registered under section 54.

Failure to
register

(2) Where a secured party fails to comply with subsection (1), the secured party shall, on written notice from the debtor, pay the debtor \$500 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Rights not
affected

(3) Subsections (1) and (2) do not affect any rights under section 56 of the debtor or of any other person having an interest in the collateral. *New.*

PART V

DEFAULT—RIGHTS AND REMEDIES

Rights and
remedies
cumulative

58. The rights and remedies mentioned in this Part are cumulative. R.S.O. 1980, c. 375, s. 56 (1).

Rights and
remedies of
secured party

59.—(1) Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and, when in possession of the collateral, the rights, remedies and duties provided in section 17.

Enforcement
by secured
party

(2) The secured party may enforce a security interest by any method permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is permitted with respect to the documents of title is also permitted, with necessary modifications, with respect to the goods covered thereby.

Rights and
remedies of
debtor

(3) Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and in section 17.

Determi-
nation of
standards

(4) Subject to subsection (5), a security agreement may set out the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.

Non-waiver
of rights and
duties

(5) Despite subsection (1), the provisions of section 17, and sections 63 to 66, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Act. R.S.O. 1980, c. 375, s. 56 (2-5), *amended*.

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights, remedies and duties in respect of the real property, with all necessary modifications, as if the personal property were real property, in which case this Part does not apply. R.S.O. 1980, c. 375, s. 56 (6).

Where agreement covers both real and personal property

(7) A security agreement does not merge merely because the claim has been reduced to judgment by the secured party or because the secured party has levied execution thereunder on the collateral. R.S.O. 1980, c. 375, s. 56 (7), *amended*.

No merger in judgment

60.—(1) Nothing in this Act prevents,

Receiver, receiver and manager

- (a) the parties to a security agreement from agreeing that the secured party may appoint a receiver or receiver and manager and, except as provided by this Act, determining the rights and duties of the receiver or receiver and manager by agreement; or
- (b) a court of competent jurisdiction from appointing a receiver or receiver and manager and determining rights and duties of the receiver or receiver and manager by order.

(2) Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the Supreme Court, with respect to a receiver or receiver and manager however appointed, may,

Idem

- (a) remove, replace or discharge the receiver or receiver and manager;
- (b) give directions on any matter relating to the duties of the receiver or receiver and manager;
- (c) approve the accounts and fix the remuneration of the receiver or receiver and manager;
- (d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager. *New*.

61.—(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled,

Collection rights of secured party

- (a) to notify any person obligated on an account or on chattel paper or any obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral; and
- (b) to take control of any proceeds to which the secured party is entitled under section 25.

Idem

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from a person obligated on an account or on chattel paper or an obligor on an instrument shall proceed in a commercially reasonable manner and the secured party may deduct the reasonable expenses of realization from the collections. R.S.O. 1980, c. 375, s. 57, *amended*.

Possession
upon default

62. Upon default under a security agreement,

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;
- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and
- (c) the secured party may dispose of collateral on the debtor's premises in accordance with section 63. R.S.O. 1980, c. 375, s. 57, *amended*.

Disposal of
collateral

63.—(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to,

- (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and

- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition,

and the surplus, if any, shall be dealt with in accordance with section 64. R.S.O. 1980, c. 375, s. 59 (1), *amended*.

(2) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (4), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (3).

Methods of
disposition

(3) Subject to subsection 65 (1), the secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (4), *amended*.

Secured
party's right
to delay
disposition of
collateral

(4) Subject to subsection (6), the secured party shall give not less than fifteen days notice in writing of the matters described in subsection (5) to,

Notice
required

- (a) the debtor who owes payment or performance of the obligation secured;
- (b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or an obligor who may owe payment or performance of the obligation secured;
- (c) every person who has a security interest in the collateral and whose interest,
 - (i) was perfected by possession, the continuance of which was prevented by the secured party who has taken possession of the collateral, or
 - (ii) is perfected by registration before the date the notice is served on the debtor;
- (d) every person with an interest in the collateral who has delivered a written notice to the secured party of the interest in the collateral before the date that the notice is served on the debtor.

(5) The notice mentioned in subsection (4) shall set out,

Idem

- (a) a brief description of the collateral;

- (b) the amount required to satisfy the obligation secured by the security interest;
- (c) the amount of the applicable expenses referred to in clause (1) (a) or, in a case where the amount of such expenses has not been determined, a reasonable estimate thereof;
- (d) a statement that upon receipt of payment the payor will be credited with any rebates or allowances to which the debtor is entitled by law or under the agreement;
- (e) a statement that upon payment of the amounts due under clauses (b) and (c), any person entitled to receive notice may redeem the collateral;
- (f) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
- (g) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

Idem

(6) If the notice to the debtor under clause (4) (a) is mailed, then the relevant date for the purpose of clause (4) (b), subclause (4) (c) (ii) and clause (4) (d) shall be the date of mailing and not the date of service.

Notice not required

(7) The notice mentioned in subsection (4) is not required where,

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline speedily in value;
- (c) the collateral is of a type customarily sold on a recognized market;
- (d) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (e) for any reason not otherwise provided for in this subsection, the District Court, on an application made without notice to any other person, is satisfied that a notice is not required;

(f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral; or

(g) a receiver and manager disposes of collateral in the course of the debtor's business. *New.*

(8) The secured party may buy the collateral or any part thereof only at a public sale unless the District Court, on application, orders otherwise. R.S.O. 1980, c. 375, s. 59 (7), *amended.*

Secured party's right to purchase collateral

(9) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

Effect of disposition of collateral

(10) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then,

Idem

(a) in the case of a public sale, if the buyer has no knowledge of any defect in the sale and if the buyer does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the buyer acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a buyer for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(11) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. R.S.O. 1980, c. 375, s. 59 (8-10).

Certain transfers of collateral

64.—(1) Where the secured party has dealt with the collateral under section 61 or has disposed of it, the secured party shall account for and, subject to subsection (4), pay over any surplus consecutively to,

Distribution of surplus

- (a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest,
 - (i) was perfected by possession, the continuance of which was prevented by the secured party who took possession of the collateral, or
 - (ii) was, immediately before the dealing or disposition, perfected by registration;
- (b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and
- (c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of the claim of any person referred to in clauses (a), (b) and (c) against the recipient of the surplus shall not be prejudiced thereby. R.S.O. 1980, c. 375, s. 60, *amended*.

Proof of
interest

(2) The secured party may require any person mentioned in subsection (1) to furnish proof of that person's interest, and, unless the proof is furnished within ten days after demand by the secured party, the secured party need not pay over any portion of the surplus to the person.

Deficiency

(3) Unless otherwise agreed in the security agreement, or unless otherwise provided under this or any other Act, the debtor is liable for any deficiency.

Payment into
court

(4) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the District Court and the surplus shall not be paid out except upon an application under section 67 by a person claiming an entitlement thereto. *New*.

Compulsory
disposition of
consumer
goods

65.—(1) Where a security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying the debtor's rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 63, and, if the secured party fails to do so, the debtor may proceed under section 67 or in an

action for damages or loss sustained. R.S.O. 1980, c. 375, s. 61 (1).

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in clauses 63 (4) (a) to (d). R.S.O. 1980, c. 375, s. 61 (2), *amended*. Acceptance
of collateral

(3) If any person entitled to notification under subsection (2), whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within thirty days after service of the notice, the secured party shall dispose of the collateral in accordance with section 63. R.S.O. 1980, c. 375, s. 61 (3), *part, amended*. Objection

(4) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after demand by the secured party, the secured party may proceed as if no objection had been made. Proof of
interest

(5) Upon application to the District Court by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because, Application
to judge

- (a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or
- (b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under clause 63 (1) (a). *New.*

(6) If no effective objection is made, the secured party is, at the expiration of the thirty-day period mentioned in subsection (3), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured, and thereafter is entitled to the collateral free from all rights and interests therein of any person entitled to notification under subsection (2) whose interest is subordinate to that of the secured party and who was served with such notice. R.S.O. 1980, c. 375, s. 61 (3), *part, amended*. Foreclosure

Effect of
disposition

(7) When a secured party disposes of the collateral after expiration of the period mentioned in subsection (6) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party. *New.*

Redemption
of collateral

66.—(1) At any time before the secured party, under section 63, has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, any person entitled to receive notice under subsection 63 (4) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party, but if more than one person elects to redeem, the priority of their rights to redeem shall be the same as the priority of their respective interests. R.S.O. 1980, c. 375, s. 62, *amended.*

Consumer
goods, re-
instatement

(2) Where the collateral is consumer goods, at any time before the secured party, under section 63 has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, the debtor may reinstate the security agreement by paying,

- (a) the sum actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default which entitles the secured party to dispose of the collateral; and
- (b) a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party.

Limitation

(3) The right to reinstate under subsection (2) may not be exercised more than once during the term of the security agreement, unless the District Court, on the application of the debtor, orders otherwise. *New.*

PART VI

MISCELLANEOUS

Court orders
and
directions

67.—(1) Upon application to the Supreme Court or to the District Court by a debtor, a creditor of a debtor, a secured

party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this section, the court may,

- (a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with Part V, section 17 or subsection 34 (3) or 35 (4);
- (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under Part V, section 17 or subsection 34 (3) or 35 (4);
- (c) make any order necessary to determine questions of priority or entitlement in or to the collateral or its proceeds;
- (d) relieve any party from compliance with the requirements of Part V, section 17 or subsection 34 (3) or 35 (4), but only on terms that are just for all parties concerned;
- (e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned; and
- (f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party. R.S.O. 1980, c. 375, s. 63 (1), *amended*.

(2) Where a person fails to discharge any duties or obligations imposed upon the person by Part V, section 17 or subsection 34 (3) or 35 (4), the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and, where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of \$500 or the actual loss or damages. R.S.O. 1980, c. 375, s. 63 (2), *amended*.

Compensation for loss or damages

(3) Except as otherwise provided in this Act, any provision in any security agreement which purports to exclude any duty or obligation imposed under this Act or to exclude or limit lia-

Void provisions

bility for failure to discharge duties or obligations imposed by this Act is void. *New.*

Removal into
Supreme
Court

(4) Where an application under subsection (1) is made to the District Court, a respondent, by notice served on the applicant and on the other respondents, if any, and filed with proof of service with the local registrar of the District Court at least two days before the hearing date of the application, may require the application to be removed into the Supreme Court. R.S.O. 1980, c. 375, c. 63 (3), *amended*.

Transmission
of papers

(5) Upon the filing of the notice with proof of service, the local registrar of the District Court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county or district in which the application was commenced, and the application shall continue as if it had commenced in the Supreme Court. R.S.O. 1980, c. 375, s. 63 (4, 5), *amended*.

Service of
notices, etc.

68.—(1) Where under this Act, a notice or any other document may be or is required to be given or delivered to or served on,

- (a) a secured party named in a registered financing statement or financing change statement, the notice or document may be given to or served on the secured party by personal service or by registered mail at the most recent address of the secured party as shown in the financing statement or financing change statement; and
- (b) a debtor by a secured party, the notice or document may be given to or served on the debtor by personal service or by registered mail at the last address of the debtor known to the secured party.

Idem

(2) Where under this Act, a notice or any document may be or is required to be given or delivered to or served on a person, other than a person to whom subsection (1) applies, the notice or document may be given to or served on,

- (a) an individual, by personal service or by registered mail addressed to the individual at his or her residence or place of business and, if the individual has more than one residence or place of business, at any one of the residences or places of business;
- (b) a partnership,
 - (i) by personal service,

- (A) upon any one or more of the partners,
or
 - (B) upon any person having control or management of the partnership business at the principal place of business of the partnership, or
- (ii) by registered mail addressed to,
- (A) the partnership,
 - (B) any one or more of the general partners,
 - (C) any person having control or management of the partnership business,
- at the principal address of the partnership;
- (c) a municipal corporation by delivery or registered mail addressed to its head of council or chief administrative officer at its principal office;
 - (d) a local board, as defined in the *Municipal Affairs Act*, by delivery or registered mail addressed to its chairman or chief administrative officer at its principal office; R.S.O. 1980,
c. 303
 - (e) a corporation, other than a municipal corporation or a local board thereof,
 - (i) by serving any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business, or
 - (ii) by registered mail addressed to the address of its registered or head office;
 - (f) upon Her Majesty in right of Ontario, unless the regulations otherwise provide, by delivery or registered mail addressed to the registrar at the central office of the registration system.
- (3) Where an individual, partnership or body corporate resides or has its principal office or its registered or head office out of Ontario but is carrying on business in Ontario, a notice or document referred to in subsection (2) may be given, delivered or served by serving any person carrying on the business in Ontario and in the case of an extra-provincial com- Out of
province

pany, by serving the attorney for service in Ontario and such service may be by personal service or by registered mail at the address of the person or attorney.

Service by
registered
mail

(4) A notice or document given or served by registered mail shall be deemed to have been given, delivered or served when the addressee actually receives the notice or document, or, except for the purposes of subsection 33 (1), upon the expiry of ten days after the day of registration, whichever is earlier.

Court
documents

(5) Any notice or other document to be served on any person in relation to a proceeding in a court shall be served in accordance with the rules of the court and subsections (1) to (4) do not apply to any such notice. *New.*

Knowledge
and notice

69. For the purposes of this Act, a person learns or knows or has notice or is notified when service is effected in accordance with section 68 or the regulations or when,

- (a) in the case of an individual, information comes to his or her attention under circumstances in which a reasonable person would take cognizance of it;
- (b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) in the case of a corporation, other than a municipal corporation or local board thereof, information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it. *New.*

Extension or
abridgment
of time

70. Where in this Act, other than in sections 5, 6, 7 and 12 and in Parts III and IV and in this Part, a time prescribed within which or before which any act or thing must be done, the District Court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the court considers just. *New.*

Destruction
of books,
etc.

71.—(1) The registrar may authorize the destruction of books, documents, records or paper, including those related to a prior law as defined in Part VII,

- (a) that have been microfilmed; or
- (b) that in the registrar's opinion need not be preserved any longer. R.S.O. 1980, c. 375, s. 68 (1), *amended*.

(2) The registrar may remove from the central file of the registration system information related to a financing statement or financing change statement,

Removal of information from registration system

- (a) if the financing statement is no longer effective;
- (b) upon the receipt of a financing change statement discharging the registration of a financing statement;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a financing statement or a financing change statement. R.S.O. 1980, c. 375, s. 68 (2), *amended*.

(3) The registrar, upon notice to the secured party, may remove from the central file of the registration system information related to a financing change statement if, Idem

- (a) it does not set out the correct registration or file number of the financing statement or financing change statement to which it relates; or
- (b) it does not set out the name of the debtor as that name is set out in the financing statement or financing change statement to which it relates.

(4) Where the destruction of a document has been authorized under subsection (1), the registrar, instead of destroying the document, may release the document to the secured party or the secured party's agent. *New.* Idem

72. Except in so far as they are inconsistent with the express provisions of this Act, the principles of law and equity, including the law merchant, the law relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, shall supplement this Act and shall continue to apply. *New.*

Application of principles of law and equity

73. Where there is conflict between a provision of this Act and a provision of the *Consumer Protection Act*, the provision of the *Consumer Protection Act* prevails and, where there is

Conflict with other Acts
R.S.O. 1980, c. 87

R.S.O. 1980,
c. 87

conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1980, c. 375, s. 69.

Regulations

74. The Lieutenant Governor in Council may make regulations,

- (a) designating branch offices;
- (b) prescribing the duties of the registrar and branch registrars;
- (c) prescribing business hours for the offices of the registration system or any of them;
- (d) respecting the registration system and searches thereof;
- (e) requiring the payment of fees and prescribing the amounts thereof;
- (f) prescribing the amount of any charge to which a secured party is entitled for any statement or copy provided pursuant to section 18;
- (g) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (h) requiring that the forms to be used shall be those provided or approved by the registrar;
- (i) governing the time assigned to the registration of financing statements and financing change statements;
- (j) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;
- (k) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (l) prescribing additional methods of serving notices and other documents for the purposes of section 68 and prescribing methods of serving notices and

other documents on persons not referred to in section 68;

- (m) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;
- (n) defining “motor vehicle”;
- (o) prescribing a lexicon of French-English terms to be used in connection with prescribed forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law. R.S.O. 1980, c. 375, s. 70 (1); 1981, c. 58, s. 5 (1), *amended*.

PART VII

APPLICATION, TRANSITION, AMENDMENTS, REPEALS, COMMENCEMENT

75. In this Part, “prior law” means,

Definition

- (a) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement was one to which *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, being chapters 33, 45 and 76, respectively, of the Revised Statutes of Ontario, 1970, or the predecessors thereof, applied;
- (b) the law related to a security agreement made before the day this section comes into force where the security agreement was one to which the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or predecessor thereof, applied;
- (c) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement is not a security agreement described in clause (a) or (b). *New.*



76.—(1) Except as otherwise provided in this Part, this Act applies, Application
of Act

- (a) to every security agreement made on or after the day this section comes into force; and

- (b) to every security agreement made on or after the 1st day of April, 1976 if the security agreement was one to which the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, applied immediately before the repeal of that Act.

Idem

(2) Except as otherwise provided in this Part, this Act does not apply,

- (a) to a security agreement to which a prior law applied at the time of its making including any advance or extension of credit, delivery of goods or other event occurring pursuant thereto whether before or after this section comes into force; or
- (b) to a transfer of chattel paper or an account, other than a transfer of a book debt, made before the coming into force of this section which does not secure payment or performance of an obligation.

Saving

(3) This Act does not affect the rights acquired by any person from a judgment or order of any court given or made before the day this Act comes into force, or affect the outcome of any litigation commenced on or before that day.

Priority of
interest
under
R.S.O. 1980,
c. 375

(4) Priority between security interests under security agreements described in subclause (1) (a) (ii) shall be determined in accordance with the law as it existed immediately before this section came into force if the security interests have been continuously perfected since this section came into force. *New.*

Chattel
mortgages,
etc., under
prior law

77.—(1) Every security agreement to which the prior law as described in clause 75 (a) applied at the time of its making continues to have such force and effect as if the Acts referred to in that clause had not been repealed if the security interest was covered by an unexpired registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this section.

Idem

(2) Where a security interest under a security agreement described in subsection (1) was not covered under an unexpired registration immediately before the coming into force of this section, the security interest may be perfected by the registration of a financing statement.

Application
of Part IV

(3) Part IV applies to the perfection, continuation of perfection and reperfecting of a security interest under a security agreement to which subsection (1) or (2) applies.

(4) Where before the coming into force of this section, a secured party under a security agreement to which the prior law as described in clause 75 (a) applied at the time of its making failed to register a financing change statement after learning of the transfer of collateral and the information required to register a financing change statement or after learning of the change of name and the new name of the debtor, the secured party shall register a financing change statement recording the transfer or the new name of the debtor, as the case may be, within twenty-four months of the coming into force of this section.

Where certain changes have not been recorded

(5) Where a secured party fails to register a financing change statement under subsection (4) by the end of the period referred to in that subsection, the security interest created by the security agreement shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the name of the transferee or the changed name of the debtor, as the case may be. *New.*

Effect of failure to comply

78.—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, (collectively referred to in this section as the former Act) that was registered under the former Act before the coming into force of this section, continues to have such force and effect as if the former Act had not been repealed and except as provided in this section and sections 43 and 44, this Act does not apply to any such mortgage, charge or assignment.

Corporation securities

(2) Where a mortgage, charge or assignment, the registration of which was provided for in the former Act, was made before the coming into force of this section but was not registered under that Act,

Idem

- (a) this Act shall be deemed always to have applied to the mortgage, charge or assignment; and
- (b) the security interest created by the mortgage, charge or assignment may be perfected under this Act.

(3) The registrar shall, with respect to each mortgage, charge and assignment, and each assignment thereof, registered under the former Act for which no certificate of discharge has been registered as of the day this section comes

Entries in registration system

into force, enter into the central file of the registration system established for the purposes of this Act,

- (a) the name of the debtor as shown in the registration under the former Act;
- (b) the registration number under the former Act; and
- (c) the following notation:

This registration was made under the *Corporation Securities Registration Act* (R.S.O. 1980, c. 94) or a predecessor thereof. A copy of the instrument is available for inspection in the offices of the Ministry of Consumer and Commercial Relations located at
(address of appropriate office)
.....

Discharged
registrations

(4) Mortgages, charges and assignments, and assignments thereof, registered under the former Act for which a certificate of discharge has been registered before the coming into force of this section shall not be entered into the registration system established for the purposes of this Act.

Registration
period

(5) A registration entered into the central file of the registration system under subsection (3) expires when it is discharged in accordance with this section.

Change of
name of
debtor

(6) Where before the coming into force of this section and after the original registration under the former Act the debtor changed its name and the secured party learned of the change before the coming into force of this section, the secured party shall register a financing change statement recording the change of name within twenty-four months of the coming into force of this section.

Effect of
failure to
comply

(7) Where a secured party fails to register a financing change statement under subsection (6) by the end of the period referred to in that subsection, the security interest created by the mortgage, charge or assignment shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the changed name of the debtor.

Discharge

(8) A secured party may discharge in whole or in part a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under

subsection (3) by the registration of a financing change statement.

(9) The debtor or any person having an interest in the collateral may make an application to the District Court for an order discharging or partially discharging a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under subsection (3). Order for discharge

(10) Upon hearing an application made under subsection (9) and upon being satisfied that no security interest was created or that the security interest is released or partially released, the court may order, Idem

- (a) that the registration be discharged where no security interest was ever created or the security interest has been released; or
- (b) that a financing change statement be registered where the security interest is partially released.

(11) The registrar may remove from the registration system information related to a registration, upon receipt of, Removal of information from registration system

- (a) a financing change statement under subsection (8) that wholly discharges the registration entered into the central file of the registration system under subsection (3); or
- (b) a certified copy of an order made under clause (10) (a).

(12) Subsection 30 (6) and sections 47, 48, 49 and 50, except subsections 48 (1) and (2), apply to the perfection, continuation of perfection and reperfecting of a security interest under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3). Application of ss. 30 (6), 47-50

(13) Where there is a default under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3), the secured party may elect to enforce the security agreement in accordance with Part V by stating in the notice referred to in subsection 63 (4) or 65 (2) that the secured party has elected to be bound by Part V. Election re: enforcement of security agreements

(14) Subsections (6) and (12) do not apply so as to require a trustee under a trust indenture to file a financing change statement recording the change of a debtor's name unless after the coming into force of this section the trust indenture is amended. *New.* Trust indentures

Saving,
certain
corporation
securities

79.—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, shall not be invalid by reason only that it was not registered under that Act, if the security interest created by the mortgage, charge or assignment was perfected by registration in compliance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, and the said *Personal Property Security Act* shall be deemed to have applied to the security interest so created from its creation and upon the coming into force of this Act, this Act applies to the security interest. 1981, c. 2, s. 1, *amended*.

Idem

(2) Subsection (1) applies even if after the perfection of a security interest by registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, the mortgage, charge or assignment was registered under the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof. *New*.

Dual
registration

(3) Despite subsections (1) and (2), where,

(a) a security agreement created or provided for both,

(i) a security interest in any class or classes of collateral and the security interest was a mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, and

(ii) a security interest in collateral other than collateral described in subclause (i) and the security interest was not a mortgage, charge or assignment, the registration of which was provided for in the said *Corporation Securities Registration Act*, or a predecessor thereof; and

(b) regardless of which occurred first,

(i) the mortgage, charge or assignment described in subclause (a) (i) was registered under the said *Corporation Securities Registration Act*, or a predecessor thereof, and

- (ii) a financing statement was registered under a predecessor of this Act in relation to the security interest described in subclause (a) (ii) and the financing statement and the financing change statements, if any, in relation thereto, do not claim a security interest in the collateral described in subclause (a) (i),

the said *Corporation Securities Registration Act* and this Act, except subsections (1) and (2) applies to the security interest described in subclause (a) (i) and the predecessor of this Act and this Act applies to the security interest described in subclause (a) (ii). *New.*

R.S.O. 1980,
c. 94

80.—(1) Upon the request of any person and upon payment of the prescribed fee, a document registered under a prior law shall be provided for inspection unless the document has been destroyed.

Inspection of
prior law
documents

(2) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a certified copy of a document registered under a prior law unless the document has been destroyed. R.S.O. 1980, c. 375, s. 66 (2), *amended.*

Copies of
documents

(3) A certified copy provided under subsection (2) is *prima facie* proof of the contents of the document so certified. *New.*

Idem

81. Except as provided in subsections 78 (7) and (12), the order of priorities between a security interest created under a prior law and any other security interest shall be determined without regard to the priority rules set out in this Act. *New.*

Priorities

82.—(1) A financing statement or financing change statement prepared in accordance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980 and the regulations thereunder, as they read immediately before the repeal of that Act, shall be accepted for registration if it is received by the registrar or a branch registrar within thirty days of the day this section comes into force.

Use of old
forms

(2) Every financing statement or financing change statement received by the registrar or a branch registrar before the repeal of the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, or received under subsection (1) expires on the expiry of the third anniversary of its registration or, in the case of a financing change statement that does not extend a period of registration, with

Period of
registration

the expiry of the financing statement to which it relates and may be renewed under this Act. *New.*

83. Section 26 of the *Execution Act*, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Taking
security
interests in
personal
property in
execution
R.S.O. 1980,
c. 375

26.—(1) Where an execution debtor is a secured party and the security interest is perfected by registration under the *Personal Property Security Act*, upon payment of the proper fees, a sheriff may seize the security interest by registering a financing change statement under that Act in the form prescribed thereunder recording the seizure of the security interest and the sheriff, after registering the financing change statement, may sell the execution debtor's security interest.

Effect of
registration

(2) Upon the registration of the financing change statement referred to in subsection (1), the security interest of the execution debtor is bound by the execution, and the registration is notice of the execution and seizure to all persons who may thereafter acquire an interest in the security agreement or the property subject to the security interest and the rights of the sheriff and the execution creditor have priority over the rights of all persons who subsequently acquire an interest in the security agreement.

Service of
notice on
debtor

(3) The debtor under a security agreement is not affected by a seizure under this section unless a notice of the seizure has been served upon the debtor, and any payment made by the debtor under the security agreement to the secured party before such service shall be valid.

Payment to
sheriff

(4) After the debtor has been served with a notice of seizure under subsection (3), the debtor shall pay to the sheriff all money then payable and, as it becomes due, all money that may become payable under the security agreement so far as may be necessary to satisfy the execution.

Payments
made after
notice

(5) Any payment made to the secured party after service of the notice of seizure under subsection (3) or after actual knowledge of the seizure is void as against the sheriff and the execution creditor.

When seizure
no longer
effective

(6) Where a financing change statement has been registered under subsection (2) and the execution has expired or is satisfied, set aside or withdrawn, the sheriff shall register a financing change statement under the *Personal Property Security Act* in the form prescribed thereunder recording the fact that the seizure of the security interest is no longer effective.

R.S.O. 1980,
c. 375

(7) In addition to the remedies provided in this Act, upon seizure of the security interest, the sheriff has all the rights and remedies of the execution debtor under the security agreement and the *Personal Property Security Act*, and the sheriff is entitled to a bond of indemnity sufficient to indemnify against all costs and expenses to be incurred by the sheriff in the enforcement of the security agreement.

Rights and remedies of sheriff

(8) On and after the day sections 68 and 69 of the *Personal Property Security Act, 1989* come into force, the references to the *Personal Property Security Act* in subsections (1), (6) and (7) shall be deemed to be references to the *Personal Property Security Act, 1989*.

Transition

1989, c. 16

84.—(1) The following Acts are repealed:

Repeals

1. The *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980.
2. The *Personal Property Security Amendment Act, 1981*, being chapter 2.
3. The *Personal Property Security Amendment Act, 1981 (No. 2)*, being chapter 58.
4. The *Bills of Sale Act*, being chapter 43 of the Revised Statutes of Ontario, 1980.
5. The *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980.

(2) No sale of goods to which the *Bills of Sale Act* applied before its repeal shall be void for failure to comply with that Act.

Transition
R.S.O. 1980,
c. 43

(3) Subsection (2) does not affect the rights acquired by any person from a judgment or order of any court before the day this Act comes into force or affect the outcome of any litigation commenced on or before the 8th day of June, 1988.

Idem

85. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

86. The short title of this Act is the *Personal Property Security Act, 1989*.

Short title

Bill 151

*(Chapter 16
Statutes of Ontario, 1989)*

An Act to revise the Personal Property Security Act and to repeal and amend certain other Acts related to Personal Property

The Hon. W. Wrye
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	June 8th, 1988
<i>2nd Reading</i>	March 1st, 1989
<i>3rd Reading</i>	March 2nd, 1989
<i>Royal Assent</i>	March 2nd, 1989

Bill 151

1988

**An Act to revise the Personal Property Security Act
and to repeal and amend certain other Acts
related to Personal Property**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“accessions” means goods that are installed in or affixed to other goods;

“account” means any monetary obligation not evidenced by chattel paper, an instrument or a security, whether or not it has been earned by performance;

“chattel paper” means one or more than one writing that evidences both a monetary obligation and a security interest in or a lease of specific goods;

“collateral” means personal property that is subject to a security interest;

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“debtor” means a person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes,

- (a) an assignor of an account or chattel paper, and
- (b) a transferee of or successor to a debtor’s interest in collateral;

“default” means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

“document of title” means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee’s possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

“equipment” means goods that are not inventory or consumer goods;

“financing change statement” means a document in the form prescribed for a financing change statement;

“financing statement” means a document in the form prescribed for a financing statement;

“future advance” means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;

“goods” means tangible personal property other than chattel paper, documents of title, instruments, money and securities, and includes fixtures, growing crops, the unborn young of animals, timber to be cut, and minerals and hydrocarbons to be extracted;

“instrument” means,

- (a) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or

R.S.C. 1970,
c. B-5

- (b) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder,

but does not include a writing that constitutes part of chattel paper, a document of title or a security;

“intangible” means all personal property, including choses in action, that is not goods, chattel paper, documents of title, instruments, money or securities;

“inventory” means goods that are held by a person for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;

“money” means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency;

“obligation secured”, for the purposes of determining the amount payable under a lease, means the amount contracted to be paid as rent under the lease and all other amounts that have or may become payable under the lease, including the amount, if any, required to be paid by the lessee to obtain full ownership of the collateral, as of the relevant date, less any amounts paid;

“personal property” means chattel paper, documents of title, goods, instruments, intangibles, money and securities and includes fixtures but does not include building materials that have been affixed to real property;

“prescribed” means prescribed by the regulations;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with collateral or the proceeds therefrom, and includes any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds therefrom;

“purchase” includes taking by sale, lease, negotiation, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in personal property;

“purchase-money security interest” means,

- (a) a security interest taken or reserved in collateral to secure payment of all or part of its price, or

- (b) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral to the extent that the value is applied to acquire the rights,

but does not include a transaction of sale by and lease back to the seller;

“purchaser” means a person who takes by purchase;

“registrar” means the registrar of personal property security;

“regulations” means the regulations made under this Act;

“secured party” means a person who holds a security interest for the person’s own benefit or for the benefit of any other person and includes a trustee where the holders of obligations issued, guaranteed or provided for under a security agreement are represented by a trustee as the holder of the security interest and for the purposes of sections 17, 59 to 64, 66 and 67 includes a receiver or receiver and manager;

“security” means a document that is,

- (a) issued in bearer, order or registered form,
- (b) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (c) one of a class or series or by its terms is divisible into a class or series of documents, and
- (d) evidence of a share, participation or other interest in property or in an enterprise or is evidence of an obligation of the issuer,

and includes an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act, 1982*; 1982, c. 4

“security agreement” means an agreement that creates or provides for a security interest and includes a document evidencing a security interest;

“security interest” means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or

performance of an obligation, the interest of a transferee of an account or chattel paper;

“trust indenture” means any security agreement by the terms of which a body corporate, with or without share capital and wherever or however incorporated,

- (a) issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and
- (b) appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for;

“value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. R.S.O. 1980, c. 375, s. 1, *amended*.

Fungibles

(2) For the purposes of this Act, fungible goods and fungible securities are goods or securities, as the case may be, of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement. *New.*

PART I

APPLICATION AND CONFLICT OF LAWS

Application of Act, general

2. Subject to subsection 4 (1), this Act applies to,

- (a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,
 - (i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and
 - (ii) an assignment, lease or consignment that secures payment or performance of an obligation; and
- (b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation. R.S.O. 1980, c. 375, s. 2, *amended*.

3. This Act applies to the Crown and every agency of the Crown. *New.* Application to Crown

4.—(1) This Act does not apply, Non-application of Act

(a) to a lien given by statute or rule of law, except as provided in subclause 20 (1) (a) (i) or section 31;

(b) to a deemed trust arising under any Act, except as provided in subsection 30 (7);

(c) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity;

(d) to a transaction under the *Pawnbrokers Act*; R.S.O. 1980, c. 372

(e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property, other than,

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the real property;

(f) to an assignment for the general benefit of creditors to which the *Assignments and Preferences Act* applies; R.S.O. 1980, c. 33

(g) to a sale of accounts or chattel paper as part of a transaction to which the *Bulk Sales Act* applies; R.S.O. 1980, c. 52

(h) to an assignment of accounts made solely to facilitate the collection of accounts for the assignor; or

(i) to an assignment of an unearned right to payment to an assignee who is to perform the assignor's obligations under the contract. R.S.O. 1980, c. 375, s. 3 (1); 1981, c. 58, s. 1, amended.

(2) The rights of buyers and sellers under subsection 20 (2) and sections 39, 40, 41 and 43 of the *Sale of Goods Act* are not affected by this Act. Rights under R.S.O. 1980, c. 462 not affected

5.—(1) Except as otherwise provided in this Act, the validity, perfection and effect of perfection or non-perfection of, Conflict of laws, location of collateral

- (a) a security interest in goods; and
- (b) a possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the collateral is situated at the time the security interest attaches.

Perfection of
security
interest
continued

(2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Ontario continues perfected in Ontario if a financing statement is registered in Ontario before the goods are brought in or if it is perfected in Ontario,

- (a) within sixty days after the goods are brought in;
- (b) within fifteen days after the day the secured party receives notice that the goods have been brought in; or
- (c) before the date that perfection ceases under the law of the jurisdiction in which the goods were situated at the time the security interest attached,

whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of those goods who acquires the goods from the debtor as consumer goods in good faith and without knowledge of the security interest and before the security interest is perfected in Ontario.

Perfection
otherwise

(3) Subsection (2) does not apply so as to prevent the perfection of a security interest after the expiry of the time limit set out in that subsection.

Perfection in
Ontario

(4) Where a security interest mentioned in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before being brought into Ontario, the security interest may be perfected under this Act.

Revendi-
cation

(5) Where goods brought into Ontario are subject to an unpaid seller's right to revendicate or to resume possession of the goods under the law of the Province of Quebec or any other jurisdiction, the right becomes unenforceable in Ontario twenty days after the goods are brought into Ontario unless the seller registers a financing statement or repossesses the goods within that twenty-day period. *New.*

6.—(1) Subject to section 7, if the parties to a security agreement creating a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to that other jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attached, the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

Goods
brought into
province

(2) If the other jurisdiction mentioned in subsection (1) is not Ontario, and the goods are later brought into Ontario, the security interest in the goods is deemed to be one to which subsection 5 (2) applies if it was perfected under the law of the jurisdiction to which the goods were removed. *New.*

Perfection in
province

7.—(1) The validity, perfection and effect of perfection or non-perfection,

Conflict of
laws, location
of debtor

(a) of a security interest in,

(i) an intangible, or

(ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and

(b) of a non-possessory security interest in a security, an instrument, a negotiable document of title, money and chattel paper,

shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest attaches.

(2) If a debtor changes location to Ontario, a perfected security interest referred to in subsection (1) continues perfected in Ontario if it is perfected in Ontario,

Change of
location

(a) within sixty days from the day the debtor changes location;

(b) within fifteen days from the day the secured party receives notice that the debtor has changed location; or

(c) prior to the day that perfection ceases under the law of the jurisdiction referred to in subsection (1),

whichever is the earliest.

Idem

(3) A security interest that is not perfected as provided in subsection (2) may be otherwise perfected under this Act.

Location of debtor

(4) For the purpose of this section, a debtor shall be deemed to be located at the debtor's place of business if there is one, at the debtor's chief executive office if there is more than one place of business, and otherwise at the debtor's principal place of residence. *New.*

Procedural and substantive issues

8.—(1) Despite sections 5, 6 and 7,

- (a) procedural matters affecting the enforcement of the right of a secured party in respect of collateral other than intangibles are governed by the law of the jurisdiction in which the collateral is located at the time of the exercise of those rights;
- (b) procedural matters affecting the enforcement of the rights of a secured party against intangibles are governed by the law of the forum; and
- (c) substantive matters affecting the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

Deemed perfection

(2) For the purposes of this Part, a security interest shall be deemed to be perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest that is enforceable against the debtor and third parties. *New.*

PART II

VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness of security agreement

9.—(1) Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties. R.S.O. 1980, c. 375, s. 9.

Idem

(2) A security agreement is not unenforceable against a third party by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless the third party is actually misled by the defect, irregularity, omission or error. *New.*

(3) Without restricting the generality of subsection (2), the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described. *New.* Idem

10. Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if the secured party fails to do so after a request by the debtor, the District Court, on the application of the debtor, may order the delivery of such a copy to the debtor. R.S.O. 1980, c. 375, s. 11, *amended.* Delivery of copy of agreement

11.—(1) A security interest is not enforceable against a third party unless it has attached. Attachment required

(2) A security interest, including a security interest in the nature of a floating charge, attaches when, When security interest attaches

- (a) the secured party or a person on behalf of the secured party other than the debtor or the debtor's agent obtains possession of the collateral or when the debtor signs a security agreement that contains a description of the collateral sufficient to enable it to be identified;
- (b) value is given; and
- (c) the debtor has rights in the collateral,

unless the parties have agreed to postpone the time for attachment, in which case the security interest attaches at the agreed time. R.S.O. 1980, c. 375, ss. 10, 12 (1), *amended.*

(3) For the purpose of subsection (2), the debtor has no rights in, Idem

- (a) crops until they become growing crops;
- (b) fish until they are caught;
- (c) the young of animals until they are conceived;
- (d) minerals or hydrocarbons until they are extracted;
or
- (e) timber until it is cut. R.S.O. 1980, c. 375, s. 12 (2), *amended.*

After-
acquired
property

12.—(1) A security agreement may cover after-acquired property.

Exception

(2) No security interest attaches under an after-acquired property clause in a security agreement,

- (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value. R.S.O. 1980, c. 375, s. 13, *amended*.

Future
advances

13. A security agreement may secure future advances. R.S.O. 1980, c. 375, s. 15, *amended*.

Agreement
not to assert
defence
against
assignee

14.—(1) An agreement by a debtor not to assert against an assignee any claim or defence that the debtor has against the debtor's seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against a holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada). R.S.O. 1980, c. 375, s. 16.

R.S.C. 1970,
c. B-5

Non-
application
R.S.O. 1980,
c. 87, s. 31
Seller's
warranties

(2) Subsection (1) does not apply to an assignment to which section 31 of the *Consumer Protection Act* applies. *New*.

15. Where a seller retains a purchase-money security interest in goods,

- (a) the *Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and
- (b) except as provided in section 14, the conditions and warranties in a sale agreement shall not be affected by any security agreement. R.S.O. 1980, c. 375, s. 17, *amended*.

R.S.O. 1980,
c. 462

Acceleration
provisions

16. Where a security agreement provides that the secured party may accelerate payment or performance if the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the agreement shall be construed to mean that the secured party may accelerate payment or per-

formance only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy. R.S.O. 1980, c. 375, s. 18, *amended*.

17.—(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties. R.S.O. 1980, c. 375, s. 19 (1).

Care of collateral

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

Idem, rights and duties of secured party

- (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the collateral and in its preservation, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured;
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it. R.S.O. 1980, c. 375, s. 19 (2), *amended*.

(3) A secured party is liable for any loss or damage caused by the secured party's failure to meet any obligations imposed by subsection (1) or (2), but does not lose the security interest in the collateral.

Liability for loss

(4) A secured party may use the collateral,

Use of collateral

- (a) in the manner and to the extent provided in the security agreement;
- (b) for the purpose of preserving the collateral or its value; or
- (c) pursuant to an order of,
 - (i) the court before which a question relating thereto is being heard, or
 - (ii) the District Court upon application by the secured party.

Idem

(5) A secured party,

- (a) is liable for any loss or damage caused by the secured party's use of the collateral otherwise than as authorized by subsection (4); and
- (b) is subject to being ordered or restrained as provided in subsection 67 (1). R.S.O. 1980, c. 375, s. 19 (3-5).

Statements of
account

18.—(1) A person who is a debtor or judgment creditor or who has an interest in the collateral or who is the authorized representative of such a person, by a notice in writing given to the secured party and containing an address for reply, may require the secured party to furnish to the person any one or more of,

- (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof as of the date specified in the notice;
- (b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral or a part thereof as specified in a list attached to the notice;
- (c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof;
- (d) a true copy of the security agreement; or
- (e) sufficient information as to the location of the security agreement or a true copy thereof so as to enable inspection of the security agreement or copy.

(2) Clauses (1) (a), (b) and (c) do not apply where the secured party is the trustee under a trust indenture.

Exception,
indenture
trustee

(3) The secured party, on the reasonable request of a person entitled to receive a true copy of the security agreement under clause (1) (d), shall permit the person or the person's authorized representative to inspect the security agreement or a true copy thereof during normal business hours at the location disclosed under clause (1) (e).

Inspection of
security
agreement

(4) If the secured party claims a security interest in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may so indicate in lieu of approving or correcting the list of such collateral as required by clause (1) (b).

Idem

(5) Subject to the payment of any charge required under subsection (7), the secured party shall answer a notice given under subsection (1) within fifteen days after receiving it, and, if without reasonable excuse,

Time for
compliance
with notice,
liability for
failure to
answer

(a) the secured party does not answer within such fifteen-day period, the secured party is liable for any loss or damage caused thereby to any person who is entitled to receive information under this section; or

(b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer.

(6) Where the person receiving a notice under subsection (1) no longer has a security interest in the collateral, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse the person fails to do so or the answer is incomplete or incorrect, the person is liable for any loss or damage caused thereby to any person entitled to receive information under this section.

Successors in
interest

(7) The secured party may require payment in advance of the charge prescribed for each statement or copy of the security agreement required under subsection (1), but the debtor is entitled to a statement without charge once in every six months.

Charges

(8) On an application to the District Court, the court, by order, may,

Court order

- (a) exempt, in whole or in part, the secured party from complying with a notice given under subsection (1), or a request under subsection (3), if the person giving the notice, not being the debtor, does not establish to the satisfaction of the court that the person has an interest in the collateral or that the person is a judgment creditor;
- (b) extend the time for complying with the notice given under subsection (1);
- (c) require the secured party to comply with a notice given under subsection (1) or a request under subsection (3); or
- (d) make such other order as it considers just.

Liability

(9) An order made under clause (8) (b) or (c) does not affect the liability of the secured party under subsection (5).

Extended
time for
compliance

(10) Despite subsection (9), where the secured party applies to the District Court for an extension of time under clause (8) (b) within fifteen days of receiving a notice under subsection (1) and the court makes an order extending the time for compliance, the secured party shall answer the notice within the time as extended and not within the time as required by subsection (5) and, if without reasonable excuse,

- (a) the secured party fails to answer the notice within the time as extended, the secured party is liable for any loss or damage caused thereby to any person entitled to receive information under this section; or
- (b) the answer is incomplete or incorrect, the secured party is liable for any loss or damage caused thereby to any person who reasonably may be expected to rely on the answer. R.S.O. 1980, c. 375, s. 20, *amended*.

PART III

PERFECTION AND PRIORITIES

Perfection

19. A security interest is perfected when,

- (a) it has attached; and
- (b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence. R.S.O. 1980, c. 375, s. 21.

20.—(1) Except as provided in subsection (3), until perfected, a security interest, Unperfected security interests

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who assumes control of the collateral through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the *Creditors' Relief Act* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has assumed control, or the proceeds of such property; R.S.O. 1980, c. 103

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, securities, instruments or goods is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transfer that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.

(2) The rights of a person,

Idem

(a) who has a statutory lien referred to in subclause (1) (a) (i) arise,

(i) in the case of the bankruptcy of the debtor, at the effective date of the bankruptcy, or

(ii) in any other case, when the lienholder has taken possession or otherwise done everything necessary to make the lien enforceable in accordance with the provisions of the Act creating the lien;

(b) under clause (1) (b) in respect of the collateral are to be determined as of the date from which the person's representative status takes effect.

Purchase-money security interest

(3) A purchase-money security interest that is perfected by registration,

(a) in collateral, other than an intangible, before or within ten days after,

(i) the debtor obtains possession of the collateral, or

(ii) a third party, at the request of the debtor, obtains possession of the collateral,

whichever is earlier; or

(b) in an intangible before or within ten days after the attachment of the security interest in the intangible,

has priority over,

(c) an interest set out in subclause (1) (a) (ii) and is effective against a person described in clause (1) (b); and

(d) the interest of a transferee of collateral that forms all or part of a sale in bulk within the meaning of the *Bulk Sales Act*. R.S.O. 1980, c. 375, s. 22, amended.

R.S.O. 1980, c. 52

Continuity of perfection

21.—(1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

Assignees

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment. R.S.O. 1980, c. 375, s. 23.

Perfection by possession or repossession

22. Possession or repossession of the collateral by the secured party, or on the secured party's behalf by a person

other than the debtor or the debtor's agent, perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) instruments;
- (d) securities;
- (e) negotiable documents of title; and
- (f) money,

but only while it is actually held as collateral. R.S.O. 1980, c. 375, s. 24, *amended*.

23. Registration perfects a security interest in any type of collateral. *New.* Perfection by registration

24.—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value secured by a written security agreement. R.S.O. 1980, c. 375, s. 26 (1). Temporary perfection

(2) A security interest perfected by possession in, Idem

- (a) an instrument or a security that a secured party delivers to the debtor for,
 - (i) ultimate sale or exchange,
 - (ii) presentation, collection or renewal, or
 - (iii) registration of transfer; or
- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,
 - (i) ultimate sale or exchange,
 - (ii) loading, unloading, storing, shipping or transshipping, or

- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor. R.S.O. 1980, c. 375, s. 26 (2), *amended*.

Idem

(3) Beyond the period of ten days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest. R.S.O. 1980, c. 375, s. 26 (3).

Perfecting as to proceeds

25.—(1) Where collateral gives rise to proceeds, the security interest therein,

- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized the dealing with the collateral; and

- (b) extends to the proceeds. R.S.O. 1980, c. 375, s. 27 (1), *amended*.

Idem

(2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective or, where the security interest is perfected with respect to the proceeds by any other method permitted under this Act, for so long as the conditions of such perfection are satisfied.

Idem

(3) A security interest in proceeds is a continuously perfected security interest if the interest in the collateral was perfected when the proceeds arose.

Idem

(4) If a security interest in collateral was perfected otherwise than by registration, the security interest in the proceeds becomes unperfected ten days after the debtor acquires an interest in the proceeds unless the security interest in the proceeds is perfected under this Act.

Motor vehicles classified as consumer goods

(5) Where a motor vehicle, as defined in the regulations, is proceeds, a person who buys or leases the vehicle as consumer goods in good faith takes it free of any security interest therein that extends to it under clause (1) (b) even though it is perfected under subsection (2) unless the secured party has registered a financing change statement that sets out the vehicle identification number in the designated place. *New*.

26.—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto. R.S.O. 1980, c. 375, s. 28 (1).

Perfecting as to goods held by a bailee

(2) A security interest in collateral in the possession of a person, other than the debtor, the debtor's agent or a bailee mentioned in subsection (1), is perfected by,

Idem

- (a) issuance of a document of title in the name of the secured party;
- (b) possession on behalf of the secured party; or
- (c) registration. R.S.O. 1980, c. 375, s. 28 (2), *amended*.

27.—(1) Where a debtor sells or leases goods that are subject to a security interest, the security interest in the goods reattaches to the goods, if,

Goods returned or repossessed

- (a) the buyer or lessee has taken free of the security interest under clause 25 (1) (a) or subsection 28 (1) or (2);
- (b) the goods are returned to or repossessed by the debtor; and
- (c) the obligation secured remains unpaid or unperformed.

(2) Where a security interest in goods reattaches under subsection (1), then any question as to,

Idem

- (a) whether or not the security interest in the goods is perfected; and
- (b) the time of its perfection or registration,

shall be determined as if the goods had not been sold or leased.

(3) If a sale or lease of goods creates an account or chattel paper and,

Where sale or lease creates an account or chattel paper

- (a) the account or chattel paper is transferred to a secured party; and

- (b) the goods are returned to or repossessed by the seller or lessor,

the transferee has a security interest in the goods.

Temporary
perfection

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was also perfected but becomes unperfected on the expiration of ten days after the return or repossession of the goods unless the transferee registers a financing statement in respect of the security interest in, or takes possession of, the goods before the expiry of that period.

Transferee of
account

(5) Where a transferee of an account has a perfected security interest in goods under subsections (3) and (4), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the account was perfected.

Transferee of
chattel paper

(6) Where a transferee of chattel paper has a perfected security interest in goods under subsections (3) and (4),

- (a) as between the transferee and the holder of a perfected security interest that attached under subsection (1), the person who had priority as to the chattel paper also has priority as to the goods; and

- (b) as between the transferee and a person other than the holder of a perfected security interest that attached under subsection (1), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security interest in the goods at the time the transferee's security interest in the chattel paper was perfected. R.S.O. 1980, c. 375, s. 29, *amended*.

Transactions
in ordinary
course of
business,
buyers of
goods

28.—(1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

Idem, lessors
of goods

(2) A lessee of goods from a lessor who leases the goods in the ordinary course of business holds the goods, to the extent of the lessee's rights under the lease, free from any security interest therein given by the lessor even though it is perfected

and the lessee knows of it, unless the lessee also knew that the lease constituted a breach of the security agreement.

(3) A purchaser of chattel paper who takes possession of it in the ordinary course of business has, to the extent that the purchaser gives new value, priority over any security interest in it, Idem, purchasers of chattel paper

- (a) that was perfected by registration if the purchaser did not know at the time of taking possession that the chattel paper was subject to a security interest; or
- (b) that has attached to proceeds of inventory under section 25, whatever the extent of the purchaser's knowledge.

(4) A purchaser of collateral that is an instrument or negotiable document of title has priority over any security interest therein perfected by registration or temporarily perfected under section 23 or 24 if the purchaser, Idem, purchasers of instruments

- (a) gave value for the interest purchased;
- (b) purchased the collateral without knowledge that it was subject to a security interest; and
- (c) has taken possession of the collateral.

(5) Where a motor vehicle, as defined in the regulations, is sold other than in the ordinary course of business of the seller and the motor vehicle is classified as equipment of the seller, the buyer takes it free from any security interest therein given by the seller even though it is perfected by registration unless the vehicle identification number of the motor vehicle is set out in the designated place on a registered financing statement or financing change statement or unless the buyer knew that the sale constituted a breach of the security agreement. Motor vehicles, transaction other than in ordinary course

(6) A *bona fide* purchaser of a security, whether in the form of a security certificate or an uncertificated security, who has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under section 23 or 24. Securities

(7) A purchaser of a security, whether in the form of a security certificate or an uncertificated security, who purchases the security in the ordinary course of business and has taken possession of it, has priority over any security interest in it perfected by registration or temporarily perfected under sec- Idem

tion 23 or 24, even though the purchaser knows of the security interest, if the purchaser did not know the purchase constituted a breach of the security agreement.

Definitions

(8) For the purposes of subsections (6) and (7), “*bona fide purchaser*”, “*purchaser*”, “*security*”, “*security certificate*” and “*uncertificated security*” have the same meaning as in sections 53 and 85 of the *Business Corporations Act, 1982. New.*

1982, c. 4

Negotiable
instruments,
etc.

29. The rights of a person who is,

(a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act (Canada)*; or

(b) a transferee from the debtor of money,

are to be determined without regard to this Act. R.S.O. 1980, c. 375, s. 31 (1), *amended.*

R.S.C. 1970,
c. B-5

Priorities,
general rule

30.—(1) If no other provision of this Act is applicable, the following priority rules apply to security interests in the same collateral:

1. Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.
2. Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,
 - i. the security interest perfected by registration has priority over the other security interest if the registration occurred before the perfection of the other security interest, and
 - ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.
3. Where priority is to be determined between security interests perfected otherwise than by registration,

priority shall be determined by the order of perfection.

4. Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment. R.S.O. 1980, c. 375, s. 35 (1), *amended*.

(2) For the purpose of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration. R.S.O. 1980, c. 375, s. 35 (2). Idem

(3) Subject to subsection (4), where future advances are made while a security interest is perfected, the security interest has the same priority with respect to each future advance as it has with respect to the first advance. Future advances

(4) A future advance under a perfected security interest is subordinate to the rights of persons mentioned in subclauses 20 (1) (a) (ii) and (iii) if the advance was made after the secured party received written notification of the interest of any such person unless, Exception

- (a) the secured party makes the advance for the purpose of paying reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral and its preservation; or
- (b) the secured party is bound to make the advance, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(5) For the purpose of subsection (1), the date for registration or perfection as to collateral is also the date for registration or perfection as to proceeds. Proceeds

(6) Where a security interest that is perfected by registration becomes unperfected and is again perfected by registration, the security interest shall be deemed to have been continuously perfected from the time of first perfection except that if a person acquired rights in all or part of the collateral during the period when the security interest was unperfected, the registration shall not be effective as against the person who acquired the rights during such period. *New.* Reperfected security interests

Deemed
trusts

R.S.O. 1980,
c. 137
1987, c. 35

(7) A security interest in an account or inventory and its proceeds is subordinate to the interest of a person who is the beneficiary of a deemed trust arising under the *Employment Standards Act* or under the *Pension Benefits Act*, 1987.

Exception

(8) Subsection (7) does not apply to a perfected purchase-money security interest in inventory or its proceeds.

Liens for
materials and
services

31. Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that the person has in respect of the materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority. R.S.O. 1980, c. 375, s. 32, *amended*.

Crops

32.—(1) A perfected security interest in crops or their proceeds, given not more than six months before the crops become growing crops by planting or otherwise, to enable the debtor to produce the crops during the production season, has priority over an earlier perfected security interest in the same collateral to the extent that the earlier interest secures obligations that were due more than six months before the crops become growing crops by planting or otherwise even though the person giving value has notice of the earlier security interest.

Idem

(2) Where more than one perfected security interest is given priority by subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced. R.S.O. 1980, c. 375, s. 34 (1), *amended*.

Purchase-
money
security
interest,
inventory

33.—(1) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor, if,

(a) the purchase-money security interest was perfected at the time,

(i) the debtor obtained possession of the inventory, or

(ii) a third party, at the request of the debtor, obtained or held possession of the inventory,

whichever is earlier;

(b) before the debtor receives possession of the inventory, the purchase-money secured party gives notice

in writing to every other secured party who has registered a financing statement in which the collateral is classified as inventory before the date of registration by the purchase-money secured party; and

- (c) the notice referred to in clause (b) states that the person giving it has or expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

(2) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest, Purchase-money security interests other than inventory

- (a) in the case of collateral, other than an intangible, was perfected before or within ten days after,

- (i) the debtor obtained possession of the collateral as a debtor, or

- (ii) a third party, at the request of the debtor, obtained or held possession of the collateral,

whichever is earlier; or

- (b) in the case of an intangible, was perfected before or within ten days after the attachment of the purchase-money security interest in the intangible. R.S.O. 1980, c. 375, s. 34 (2, 3), *amended*.

(3) Where more than one purchase-money security interest is given priority by subsections (1) and (2), the purchase-money security interest, if any, of the seller has priority over any other purchase-money security interest given by the same debtor. *New.* Priority of seller's purchase-money security interest

34.—(1) A security interest in goods that attached, Fixtures

- (a) before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or
- (b) after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest in the goods attached and who has not con-

sented in writing to the security interest or disclaimed an interest in the fixture.

Exceptions

(2) A security interest mentioned in subsection (1) is subordinate to the interest of,

- (a) a subsequent purchaser for value of an interest in the real property; or
- (b) a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances,

if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with section 54.

Removal of collateral

(3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provisions of this Act respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

Security

(4) A person entitled to reimbursement under subsection (3) may refuse permission to remove the fixture until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 36 (1-4), *amended*.

Notice

(5) A secured party who has the right to remove a fixture from real property shall serve, on each person who appears by the records of the proper land registry office to have an interest in the real property, a notice in writing of the secured party's intention to remove the fixture containing,

- (a) the name and address of the secured party;
- (b) a description of the fixture to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligation secured by the security interest of the secured party;

- (d) a description of the real property to which the fixture is affixed sufficient to enable the real property to be identified; and
- (e) a statement of intention to remove the fixture unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(6) The notice mentioned in subsection (5) shall be served in accordance with section 68 or by registered mail addressed to the person to whom notice is to be given at the address furnished under section 166 of the *Land Titles Act* or section 37 of the *Registry Act*, or where no such address has been furnished, addressed to the solicitor whose name appears on the registered instrument by which the person appears to have an interest. *New.*

Idem

R.S.O. 1980,
cc. 230, 445

(7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fixture has been removed from the real property by the secured party in accordance with subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 36 (5), *amended.*

Retention of
collateral

35.—(1) Subject to subsections (2) and (3) of this section and section 37, a security interest in goods that attached,

Accessions

- (a) before the goods became an accession, has priority as to the accession over the claim of any person in respect of the whole; and
- (b) after the goods became an accession, has priority as to the accession over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole at the date the security interest attached to the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(2) A security interest referred to in subsection (1),

Exceptions

- (a) is subordinate to the interest of,

- (i) a subsequent buyer of an interest in the whole, and

- (ii) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances,

if the subsequent sale or subsequent advance under the prior perfected security interest is made or contracted for before the security interest is perfected; and

- (b) is subordinate to the interest of a creditor of the debtor who assumes control of the whole through execution, attachment, garnishment, charging order, equitable execution or other legal process, if control is assumed before the security interest is perfected. R.S.O. 1980, c. 375, s. 37 (1, 2), *amended*.

Idem

(3) Despite clause (2) (b), a purchase-money security interest in an accession that is perfected before or within ten days after the debtor obtains possession of the accession has priority over the interest of a creditor referred to in that clause. *New*.

Removal of collateral

(4) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Act respecting default, remove the accession from the whole if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the accession or by the necessity for replacement.

Security

(5) A person entitled to reimbursement under subsection (4) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement. R.S.O. 1980, c. 375, s. 37 (3), *amended*.

Notice

(6) The secured party who has the right to remove an accession from the whole shall serve, on each person known to the secured party as having an interest in the other goods and on any person with a security interest in such other goods perfected by registration against the name of the debtor or against the vehicle identification number of such other goods, if such number is required for registration, a notice in writing of the secured party's intention to remove the accession containing,

- (a) the name and address of the secured party;

- (b) a description of the accession to be removed sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligations secured by the security interest of the secured party;
- (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of intention to remove the accession from the whole unless the amount secured is paid on or before a specified day that is not less than ten days after service of the notice.

(7) The notice mentioned in subsection (6) shall be served in accordance with section 68 at least ten days before the accession is removed. *New.* Idem

(8) A person having an interest in the whole that is subordinate to a security interest in the accession may, before the accession has been removed by the secured party in accordance with subsection (3), retain the accession upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest. R.S.O. 1980, c. 375, s. 37 (4), *amended.* Retention of collateral

36.—(1) A security interest in a right to payment under a lease of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the lessor's interest in the lease or in the real property thereby demised if the interest, or notice thereof, of the person is registered in the proper land registry office before the interest, or notice thereof, of the secured party is registered in the proper land registry office. Real property payments, rents

(2) A security interest in a right to payment under a mortgage or charge of real property, to which this Act applies, is subordinate to the interest of a person who acquires for value the mortgagee's or chargee's interest in the mortgage or charge if the interest of the person is registered in the proper land registry office before a notice of the security interest is registered in the proper land registry office. 1981, c. 58, s. 2. Mortgages

37. A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank Commingled goods

equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. R.S.O. 1980, c. 375, s. 38.

Subordina-
tion

38. A secured party may, in the security agreement or otherwise, subordinate the secured party's security interest to any other security interest and such subordination is effective according to its terms. R.S.O. 1980, c. 375, s. 39, *amended*.

Alienation of
rights of a
debtor

39. The rights of a debtor in collateral may be transferred voluntarily or involuntarily despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise. R.S.O. 1980, c. 375, s. 33.

Person
obligated on
an account
or on chattel
paper

40.—(1) Unless a person obligated on an account or on chattel paper has made an enforceable agreement not to assert defences or claims arising out of a contract, the rights of an assignee are subject to,

- (a) all the terms of the contract between the person and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the person against the assignor that accrued before the person received notice of the assignment.

Idem

(2) A person obligated on an account or on chattel paper may pay the assignor until the person receives notice, reasonably identifying the relevant rights, that the account or chattel paper has been assigned, and, if requested by the person, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if the assignee does not do so, the person may pay the assignor. R.S.O. 1980, c. 375, s. 40 (1, 2), *amended*.

Modification,
etc., effective
against
assignee

(3) To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's right under or the assignor's ability to perform the contract, is effective against an assignee unless the person obligated on the account or chattel paper has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. *New*.

PART IV

REGISTRATION

41.—(1) A registration system, including a central office and branch offices, shall be maintained for the purposes of this Act and the *Repair and Storage Liens Act, 1989*. R.S.O. 1980, c. 375, s. 41 (1), *amended*. Registration system
1989, c. 17

(2) The central office of the registration system shall be located at or near the City of Toronto. Central office

(3) Branch offices of the registration system shall be established at such places as are designated by the regulations. R.S.O. 1980, c. 375, s. 41 (2, 3). Branch offices

42.—(1) There shall be a registrar of personal property security and a branch registrar for each branch office. Registrar,
branch
registrars

(2) The registrar shall be the public servant designated as registrar by the Minister of Consumer and Commercial Relations. Idem

(3) The branch registrars shall be those public servants designated by name or position as branch registrars by the registrar. Idem

(4) The registrar shall have a seal of office in such form as the Lieutenant Governor in Council may by order approve. R.S.O. 1980, c. 375, s. 42, *amended*. Seal of office

(5) No action or other proceeding for damages shall be instituted against the registrar or any person employed in the Ministry of Consumer and Commercial Relations for any act done in good faith in the execution or intended execution of the person's duty under this Act or the *Repair and Storage Liens Act, 1989* or for any alleged neglect or default in the execution in good faith of the person's duty thereunder. Protection
from
personal
liability
1989, c. 17

(6) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* but subject to subsection 44 (18), subsection (5) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (5) to which it would otherwise be subject. Crown
Liability
R.S.O. 1980,
c. 393

(7) The registrar and each branch registrar may designate one or more public servants to act on his or her behalf. R.S.O. 1980, c. 375, s. 43. Delegation

Certificate of
registrar

43.—(1) Upon the request of any person for a search of the individual debtor name index, business debtor name index or motor vehicle identification number index and upon payment of the prescribed fee, the registrar shall issue a certificate stating,

- (a) whether, at the time mentioned in the certificate, there is registered a financing statement or a financing change statement the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the financing statement or financing change statement as a debtor or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information;
- (b) whether, at the time mentioned in the certificate, there is entered in the central file of the registration system any information required or permitted to be entered by section 78 in which the name with respect to which the inquiry is made is shown as debtor; and
- (c) whether, at the time mentioned in the certificate, there is registered a claim for lien or a change statement under the *Repair and Storage Liens Act, 1989* the registration of which is recorded in the central file of the registration system in which the name or number with respect to which the inquiry is made is shown in the designated place on the claim for lien or change statement as an owner or as a motor vehicle identification number, as the case may be, and, if there is, the registration number of it and any other recorded information.

1989, c. 17

Idem

(2) A certificate issued under subsection (1) is *prima facie* proof of the contents thereof.

Similar
names

(3) A certificate issued under subsection (1) may include information relating to a registered financing statement or financing change statement recorded in the central file of the registration system which sets out in the designated place a debtor name or vehicle identification number which is similar, in the opinion of the registrar, to the name or number with respect to which the inquiry is made.

Certified
copies

(4) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a

certified copy of a registered financing statement or a registered financing change statement.

(5) A certified copy furnished under subsection (4) is *prima facie* proof of the contents of the document so certified. R.S.O. 1980, c. 375, s. 44, *amended*. Idem

44.—(1) The account in the Consolidated Revenue Fund known as “The Personal Property Security Assurance Fund” is hereby continued. Assurance Fund

(2) The prescribed portion of the fees received under this Act shall be paid into the Assurance Fund. R.S.O. 1980, c. 375, s. 45 (1), *amended*. Idem

(3) Interest shall be credited to the Assurance Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Assurance Fund at the end of the previous calendar year. R.S.O. 1980, c. 375, s. 45 (2). Idem

(4) Any person who suffers loss or damage as a result of the person's reliance upon a certificate of the registrar issued under section 43 that is incorrect because of an error or omission in the operation of the system of registration, recording and production of information under this Part or section 78 or under the *Repair and Storage Liens Act, 1989* is entitled to be paid compensation out of the Assurance Fund so far as the Assurance Fund is sufficient for that purpose, having regard to any claims which have been approved but have not been paid. Entitlement to payment

(5) A person claiming to be entitled to payment of compensation out of the Assurance Fund shall file an application with the registrar, setting out the person's name and address and particulars of the claim. 1989, c. 17

(6) A claim against the Assurance Fund must be made within one year from the time that the loss or damage giving rise to the claim came to the claimant's knowledge. Claims

(7) For the purposes of this section, where the holders of debt obligations issued, guaranteed or provided for under a security agreement are represented by a trustee or other person and the trustee or other person has relied upon a certificate of the registrar issued under section 43, all of the holders of the debt obligations shall be deemed to have relied on the certificate, and where a claim is made against the Assurance Idem

Fund, it shall be made by the trustee or other person on behalf of all the holders of such obligations.

Duty of
registrar

(8) The registrar shall determine a claim against the Assurance Fund within ninety days of receiving an application for compensation and,

- (a) where the registrar determines that the claim should not be paid, the registrar shall forthwith advise the claimant of the decision; or
- (b) where the registrar determines that the claimant is entitled to a payment out of the Assurance Fund, the registrar shall make an offer of settlement in satisfaction of the claim,

and the decision or offer of settlement shall be deemed to be confirmed thirty days after the mailing thereof to the claimant unless the claimant requests a hearing under subsection (9).

Hearing

(9) Where the registrar makes a decision under clause (8) (a) or an offer of settlement under clause (8) (b) that is for less than the full amount of the claim, the claimant, within thirty days from the day that the decision or offer is mailed to the claimant, may request the Director of Titles appointed under the *Land Titles Act* to hold a hearing to determine the claimant's entitlement to compensation and the request shall be in writing.

R.S.O. 1980,
c. 230

Idem

(10) As soon as possible after receiving a request under subsection (9), the Director of Titles or, where a person has been appointed under subsection (11), the person so appointed shall hold a hearing and decide the claimant's entitlement to compensation and, if he or she considers it appropriate, award costs.

Delegation

(11) The Director of Titles may appoint a person to act on his or her behalf in the hearing of a claim for compensation under this section.

Confirmation
of decision

(12) A decision under subsection (10) shall be deemed to be confirmed at the expiration of thirty days from the date of the mailing of the decision to the claimant, unless a notice of an application under subsection (14) is served on the Director of Titles within that time.

Application
to District
Court

(13) Where the registrar fails to determine a claim for compensation under subsection (8) within ninety days, the District Court, on the application of the claimant made within sixty

days of the expiry of the ninety-day period, may order the payment of such compensation as is set out in the order.

(14) Where the claimant is dissatisfied with a decision under subsection (10), the District Court, on the application of the claimant made within thirty days of the mailing of the decision to the claimant, may order that the decision under subsection (10) be set aside and may order the payment of such compensation as may be set out in the order. Idem

(15) When an offer of settlement has been accepted or the time for an application under subsection (13) or (14) has expired or, where an application has been made, it is disposed of and it is finally determined that the claimant is entitled to payment of compensation out of the Assurance Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay the sum to the claimant out of the Assurance Fund. Payment

(16) Where compensation is paid to a claimant under this section, the registrar is subrogated to the rights of the claimant to the amount so paid against any person indebted to the claimant and whose debt to the claimant was the basis of the loss or damage in respect of which the claimant was paid, and the registrar may enforce those rights by action in court or otherwise in the name of Her Majesty in right of Ontario. Subrogation

(17) The registrar may require a claimant to exhaust the claimant's remedies against the collateral, the debtor and any guarantor and, where the registrar does so, the Assurance Fund is liable for the reasonable costs of the claimant, including solicitor and client costs. Action by claimant

(18) No action or other proceeding for damages shall be instituted against the Crown with respect to any matter in relation to which a claim against the Assurance Fund has been filed. Protection from liability

(19) No claim shall be filed against the Assurance Fund with respect to any matter in relation to which an action or other proceeding for damages has been commenced in any court against the Crown. Idem

(20) The maximum amount that may be paid out of the Assurance Fund with respect to claims related to any one security agreement shall not exceed \$1,000,000 in total. Maximum payable from Assurance Fund

(21) If the total of all claims against the Assurance Fund in respect of a security agreement exceeds \$1,000,000, payments Idem

to claimants shall be made in accordance with the ratio that the amount of the claimant's loss bears to the total amount of the losses of all claimants. *New.*

Registration
of financing
statement

45.—(1) In order to perfect a security interest by registration under this Act, a financing statement shall be registered. R.S.O. 1980, c. 375, s. 47 (1), *amended.*

Consumer
goods

(2) Where the collateral is consumer goods, the financing statement referred to in subsection (1) shall not be registered before the security agreement is signed by the debtor and, where a financing statement is registered in contravention of this subsection, the registration of the financing statement does not constitute registration or perfection under this Act.

Collateral
other than
consumer
goods

(3) Where the collateral is not consumer goods, the financing statement referred to in subsection (1) may be registered before or after the security agreement is signed by the debtor.

Subsequent
security
agreements

(4) Except where the collateral is consumer goods, one financing statement may perfect one or more security interests created or provided for in one or more security agreements between the parties. *New.*

Place of
registration

46.—(1) A financing statement or financing change statement to be registered under this Act may be tendered for registration,

(a) by delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations. R.S.O. 1980, c. 375, s. 46, *amended.*

Form

(2) Every financing statement and financing change statement to be registered under this Act shall be in the prescribed form.

Classification
of collateral

(3) Except with respect to rights to proceeds, where a financing statement or financing change statement sets out a classification of collateral and also contains words that appear to limit the scope of the classification, then, unless otherwise indicated in the financing statement or financing change statement, the secured party may claim a security interest perfected by registration only in the class as limited. *New.*

Errors, etc.

(4) A financing statement or financing change statement is not invalidated nor is its effect impaired by reason only of an error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by

the error or omission. R.S.O. 1980, c. 375, ss. 4, 47 (5), *amended*.

(5) Registration of a financing statement or financing change statement, Effect of registration

(a) does not constitute constructive notice or knowledge to or by third parties of the existence of the financing statement or financing change statement or of the contents thereof; and

(b) does not create a presumption that this Act applies to the transaction to which the registration relates.

(6) Where a financing statement or financing change statement is registered, the secured party shall deliver to the debtor within thirty days after the date of registration, Copy to debtor

(a) a copy of the registered financing statement or financing change statement; or

(b) a copy of a verification statement in the prescribed form.

(7) Where the secured party without reasonable excuse fails to deliver a copy required under subsection (6), the secured party shall pay \$500 to the debtor which sum is recoverable in the Provincial Court (Civil Division). *New*. Penalty

47.—(1) A financing change statement may be registered where a security interest is perfected by registration and the secured party has assigned the secured party's interest in all or part of the collateral. R.S.O. 1980, c. 375, s. 48 (1), *amended*. Assignment of security interest

(2) Where a security interest has not been perfected by registration and the secured party has assigned the secured party's interest, a financing statement referred to in section 46 may be registered, Idem

(a) naming the assignor as the secured party and subsection (1) applies; or

(b) naming the assignee as the secured party and subsection (1) does not apply. R.S.O. 1980, c. 375, s. 48 (2), *amended*.

(3) Upon the registration of the financing change statement under subsection (1) or the financing statement under sub- Idem

section (2), the assignee becomes a secured party of record. R.S.O. 1980, c. 375, s. 48 (3).

Transfer of
collateral

48.—(1) Where a security interest is perfected by registration and the debtor, with the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen days after the transfer is made unless the secured party registers a financing change statement within such fifteen days. R.S.O. 1980, c. 375, s. 49 (1), *amended*.

Idem

(2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of,

- (a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and
- (b) the day the secured party learns the information required to register a financing change statement,

unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

Change of
debtor name

(3) Where a security interest is perfected by registration and the secured party learns that the name of the debtor has changed, the security interest in the collateral becomes unperfected thirty days after the secured party learns of the change of name and the new name of the debtor unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days. R.S.O. 1980, c. 375, s. 49 (2), *amended*.

Transferee in
possession

(4) Where the debtor's interest in all or part of the collateral is transferred by the debtor without the consent of the secured party and there is one or more subsequent transfers of the collateral without the consent of the secured party before the secured party learns of the name of the transferee who has possession of the collateral, the secured party shall be deemed to have complied with subsection (2) if the secured party registers a financing change statement within thirty days of learning of the name of the transferee who has possession of the collateral and the information required to register a financing change statement and the secured party need not register financing change statements with respect to any intermediate transferee. *New*.

(5) A security interest that becomes unperfected under subsection (1), (2) or (3) may be perfected again by registering a financing change statement at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof. R.S.O. 1980, c. 375, s. 49 (3), *amended*.

Financing
change
statement

(6) Where the Registrar General notifies the registrar that a debtor has changed his or her name and provides the registrar with particulars of a registration under this Act in which the debtor's former name appears as debtor, the registrar shall amend the debtor's name as shown in the central file of the registration system related to the registration.

Notification
by Registrar
General

(7) Subsection (3) does not apply if the registrar, under subsection (6), amends the central file of the registration system,

Idem

- (a) before the secured party learns of the new name of the debtor; or
- (b) within thirty days of the day the secured party learns of the new name of the debtor.

(8) If the registrar, under subsection (6), amends the central file of the registration system more than thirty days after the day the secured party learns of the new name of the debtor, the registrar's amendment shall be deemed to be a financing change statement registered by the secured party at the time the amendment was made. *New*.

Idem

49. A financing change statement may be registered at any time during the registration period of a financing statement,

Amendments

- (a) to correct an error or omission in the registered financing statement or any financing change statement related thereto; or
- (b) to amend the registered financing statement or any financing change statement related thereto where the amendment is not otherwise provided for in this Part. *New*.

50. Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective. R.S.O. 1980, c. 375, s. 51.

Subordi-
nation of
security
interest

Registration
period

51.—(1) A financing statement may be registered for a perpetual period or for such period of years as is set out in the financing statement.

Change of
registration
period

(2) The registration period of a financing statement may be reduced by the registration of a financing change statement under section 49 or extended by the registration of a financing change statement under subsection 52 (1).

Duration of
registration
period

(3) The registration period for a financing statement begins with the time assigned to its registration by the registrar or branch registrar and ends on the earlier of,

- (a) the time the registration is discharged; or
- (b) at the end of the registration period as set out in the financing statement or as changed by subsequent financing change statements.

Effective
period

(4) A financing statement is effective only during its registration period.

Consumer
goods

(5) Despite subsection (1), a financing statement that indicates that the collateral is or includes consumer goods shall be deemed to have a registration period of five years, unless a shorter registration period is indicated on the financing statement or unless the registration period is extended by the registration of a financing change statement under subsection 52 (1).

Idem

(6) Every financing change statement extending the registration period of a financing statement described in subsection (5) shall be deemed to extend the registration period for a five year period that begins at the time of its registration unless a shorter extension is indicated on the financing change statement.

Renewal of
registration

52.—(1) Where a security interest has been perfected by registration, the registration may be extended before the registration ceases to be effective by the registration of a financing change statement.

Reperfection

(2) Where a security interest has been perfected by registration and the registration has ceased to be effective, the security interest may be perfected again by the registration of a financing statement. R.S.O. 1980, c. 375, s. 52, *amended*.

Financing
change
statement

53. The registration of a financing change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registra-

tion of the financing statement to which it relates is effective.
New.

54.—(1) A notice of security interest, in the prescribed form, may be registered in the proper land registry office, where, Notice in land registry office

- (a) the collateral is or includes fixtures or goods that may become fixtures or crops, or minerals or hydrocarbons to be extracted, or timber to be cut; or
- (b) the security interest is a security interest in a right to payment under a lease, mortgage or charge of real property to which this Act applies. 1981, c. 58, s. 4.

(2) Where the collateral is consumer goods, a notice registered under clause (1) (a) or an extension notice registered under subsection (3), as the case may be, shall set out an expiration date, which date shall not be later than the fifth anniversary of the date of registration and the notice or extension notice is effective until the end of the expiration date. Consumer goods, registration period

(3) A registration to which subsection (2) applies may be extended before the end of the registration period by the registration of an extension notice. Idem

(4) A notice registered under subsection (1) may be discharged or partially discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office. Discharge

(5) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of subsection 34 (2) to have knowledge of the security interest. R.S.O. 1980, c. 375, s. 54 (2, 3), *amended*. Effect of registration

(6) Where the collateral is consumer goods and the expiration date set out in a notice registered under clause (1) (a) has passed and an extension notice has not been registered or has expired, the land described in the notice is not affected by any claim under the notice but this subsection does not prevent the registration of a new notice under clause (1) (a). *New.* Loss of claim

55. A registration may be discharged or partially discharged by the registration of a financing change statement discharging or partially discharging the registration. R.S.O. 1980, c. 375, s. 55 (1), *amended*. Discharge or partial discharge of registration

Demand for
discharge,
where
security
interest
existed

56.—(1) Where a financing statement or notice of security interest is registered under this Act, and,

- (a) all the obligations under a security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by a security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54 (4), or both, and the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.

Idem, where
no security
interest
acquired

(2) Where a financing statement or notice of security interest is registered under this Act and the person named in the financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54 (4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be.

Interpretation

(3) For the purposes of subsections (4) and (5), “secured party” includes a person named in a financing statement or notice of security interest as the secured party to whom subsection (2) applies.

Failure to
deliver

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statement or certificate of discharge or partial discharge, or both, as the case may be, required under subsection (1) or (2) within ten days after receipt of a demand therefor, the secured party shall pay \$500 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(5) Upon application to the District Court, the court may,

Security or
payment into
court

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as the court may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement or notice of security interest; or
- (b) order upon any ground that the court considers proper that,
 - (i) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be, or
 - (ii) the land registrar delete any entry in the books of the land registry office related to the notice of security interest or that the land registrar amend the books of the land registry office to indicate that the security interest has been discharged or partially discharged, as the case may be.

(6) Where the person receiving a notice under clause (1) (a) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay \$500 to the person making the demand and any damages resulting from the failure which sum and damages are recoverable in any court of competent jurisdiction. *New.*

Successors in
interest

57.—(1) Within thirty days after all the obligations under a security agreement that creates a security interest in consumer goods have been performed or forgiven, the secured party shall register,

Consumer
goods, duty
of secured
party to
register or
provide
discharge

- (a) a financing change statement discharging the registration if the security interest has been perfected by registration; and
- (b) a certificate of discharge, if a notice of security interest has been registered under section 54.

Failure to
register

(2) Where a secured party fails to comply with subsection (1), the secured party shall, on written notice from the debtor, pay the debtor \$500 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Rights not
affected

(3) Subsections (1) and (2) do not affect any rights under section 56 of the debtor or of any other person having an interest in the collateral. *New.*

PART V

DEFAULT—RIGHTS AND REMEDIES

Rights and
remedies
cumulative

58. The rights and remedies mentioned in this Part are cumulative. R.S.O. 1980, c. 375, s. 56 (1).

Rights and
remedies of
secured party

59.—(1) Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and, when in possession of the collateral, the rights, remedies and duties provided in section 17.

Enforcement
by secured
party

(2) The secured party may enforce a security interest by any method permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is permitted with respect to the documents of title is also permitted, with necessary modifications, with respect to the goods covered thereby.

Rights and
remedies of
debtor

(3) Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and in section 17.

Determi-
nation of
standards

(4) Subject to subsection (5), a security agreement may set out the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as those standards are not manifestly unreasonable having regard to the nature of the rights and duties.

Non-waiver
of rights and
duties

(5) Despite subsection (1), the provisions of section 17, and sections 63 to 66, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Act. R.S.O. 1980, c. 375, s. 56 (2-5), *amended.*

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights, remedies and duties in respect of the real property, with all necessary modifications, as if the personal property were real property, in which case this Part does not apply. R.S.O. 1980, c. 375, s. 56 (6).

Where agreement covers both real and personal property

(7) A security agreement does not merge merely because the claim has been reduced to judgment by the secured party or because the secured party has levied execution thereunder on the collateral. R.S.O. 1980, c. 375, s. 56 (7), *amended*.

No merger in judgment

60.—(1) Nothing in this Act prevents,

Receiver, receiver and manager

- (a) the parties to a security agreement from agreeing that the secured party may appoint a receiver or receiver and manager and, except as provided by this Act, determining the rights and duties of the receiver or receiver and manager by agreement; or
- (b) a court of competent jurisdiction from appointing a receiver or receiver and manager and determining rights and duties of the receiver or receiver and manager by order.

(2) Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the Supreme Court, with respect to a receiver or receiver and manager however appointed, may,

Idem

- (a) remove, replace or discharge the receiver or receiver and manager;
- (b) give directions on any matter relating to the duties of the receiver or receiver and manager;
- (c) approve the accounts and fix the remuneration of the receiver or receiver and manager;
- (d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager. *New*.

61.—(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled,

Collection rights of secured party

- (a) to notify any person obligated on an account or on chattel paper or any obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral; and
- (b) to take control of any proceeds to which the secured party is entitled under section 25.

Idem

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from a person obligated on an account or on chattel paper or an obligor on an instrument shall proceed in a commercially reasonable manner and the secured party may deduct the reasonable expenses of realization from the collections. R.S.O. 1980, c. 375, s. 57, *amended*.

Possession
upon default

62. Upon default under a security agreement,

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;
- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and
- (c) the secured party may dispose of collateral on the debtor's premises in accordance with section 63. R.S.O. 1980, c. 375, s. 57, *amended*.

Disposal of
collateral

63.—(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to,

- (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and

- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition,

and the surplus, if any, shall be dealt with in accordance with section 64. R.S.O. 1980, c. 375, s. 59 (1), *amended*.

(2) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (4), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (3).

Methods of
disposition

(3) Subject to subsection 65 (1), the secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable. R.S.O. 1980, c. 375, s. 59 (4), *amended*.

Secured
party's right
to delay
disposition of
collateral

(4) Subject to subsection (6), the secured party shall give not less than fifteen days notice in writing of the matters described in subsection (5) to,

Notice
required

- (a) the debtor who owes payment or performance of the obligation secured;
- (b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or an obligor who may owe payment or performance of the obligation secured;
- (c) every person who has a security interest in the collateral and whose interest,
 - (i) was perfected by possession, the continuance of which was prevented by the secured party who has taken possession of the collateral, or
 - (ii) is perfected by registration before the date the notice is served on the debtor;
- (d) every person with an interest in the collateral who has delivered a written notice to the secured party of the interest in the collateral before the date that the notice is served on the debtor.

(5) The notice mentioned in subsection (4) shall set out,

Idem

- (a) a brief description of the collateral;

- (b) the amount required to satisfy the obligation secured by the security interest;
- (c) the amount of the applicable expenses referred to in clause (1) (a) or, in a case where the amount of such expenses has not been determined, a reasonable estimate thereof;
- (d) a statement that upon receipt of payment the payor will be credited with any rebates or allowances to which the debtor is entitled by law or under the agreement;
- (e) a statement that upon payment of the amounts due under clauses (b) and (c), any person entitled to receive notice may redeem the collateral;
- (f) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
- (g) the date, time and place of any public sale or the date after which any private disposition of the collateral is to be made.

Idem

(6) If the notice to the debtor under clause (4) (a) is mailed, then the relevant date for the purpose of clause (4) (b), subclause (4) (c) (ii) and clause (4) (d) shall be the date of mailing and not the date of service.

Notice not
required

(7) The notice mentioned in subsection (4) is not required where,

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline speedily in value;
- (c) the collateral is of a type customarily sold on a recognized market;
- (d) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (e) for any reason not otherwise provided for in this subsection, the District Court, on an application made without notice to any other person, is satisfied that a notice is not required;

- (f) after default, every person entitled to receive a notice of disposition under subsection (4) consents in writing to the immediate disposition of the collateral; or
- (g) a receiver and manager disposes of collateral in the course of the debtor's business. *New.*

(8) The secured party may buy the collateral or any part thereof only at a public sale unless the District Court, on application, orders otherwise. R.S.O. 1980, c. 375, s. 59 (7), *amended.*

Secured party's right to purchase collateral

(9) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

Effect of disposition of collateral

(10) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then,

Idem

- (a) in the case of a public sale, if the buyer has no knowledge of any defect in the sale and if the buyer does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
- (b) in any other case, if the buyer acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a buyer for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(11) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. R.S.O. 1980, c. 375, s. 59 (8-10).

Certain transfers of collateral

64.—(1) Where the secured party has dealt with the collateral under section 61 or has disposed of it, the secured party shall account for and, subject to subsection (4), pay over any surplus consecutively to,

Distribution of surplus

- (a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest,
 - (i) was perfected by possession, the continuance of which was prevented by the secured party who took possession of the collateral, or
 - (ii) was, immediately before the dealing or disposition, perfected by registration;
- (b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and
- (c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of the claim of any person referred to in clauses (a), (b) and (c) against the recipient of the surplus shall not be prejudiced thereby. R.S.O. 1980, c. 375, s. 60, *amended*.

Proof of
interest

(2) The secured party may require any person mentioned in subsection (1) to furnish proof of that person's interest, and, unless the proof is furnished within ten days after demand by the secured party, the secured party need not pay over any portion of the surplus to the person.

Deficiency

(3) Unless otherwise agreed in the security agreement, or unless otherwise provided under this or any other Act, the debtor is liable for any deficiency.

Payment into
court

(4) Where there is a question as to who is entitled to receive payment under subsection (1), the secured party may pay the surplus into the District Court and the surplus shall not be paid out except upon an application under section 67 by a person claiming an entitlement thereto. *New*.

Compulsory
disposition of
consumer
goods

65.—(1) Where a security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying the debtor's rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 63, and, if the secured party fails to do so, the debtor may proceed under section 67 or in an

action for damages or loss sustained. R.S.O. 1980, c. 375, s. 61 (1).

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in clauses 63 (4) (a) to (d). R.S.O. 1980, c. 375, s. 61 (2), *amended*. Acceptance
of collateral

(3) If any person entitled to notification under subsection (2), whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within thirty days after service of the notice, the secured party shall dispose of the collateral in accordance with section 63. R.S.O. 1980, c. 375, s. 61 (3), *part, amended*. Objection

(4) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after demand by the secured party, the secured party may proceed as if no objection had been made. Proof of
interest

(5) Upon application to the District Court by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because, Application
to judge

- (a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or
- (b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under clause 63 (1) (a). *New*.

(6) If no effective objection is made, the secured party is, at the expiration of the thirty-day period mentioned in subsection (3), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured, and thereafter is entitled to the collateral free from all rights and interests therein of any person entitled to notification under subsection (2) whose interest is subordinate to that of the secured party and who was served with such notice. R.S.O. 1980, c. 375, s. 61 (3), *part, amended*. Foreclosure

Effect of
disposition

(7) When a secured party disposes of the collateral after expiration of the period mentioned in subsection (6) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party. *New.*

Redemption
of collateral

66.—(1) At any time before the secured party, under section 63, has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, any person entitled to receive notice under subsection 63 (4) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party, but if more than one person elects to redeem, the priority of their rights to redeem shall be the same as the priority of their respective interests. R.S.O. 1980, c. 375, s. 62, *amended.*

Consumer
goods, re-
instatement

(2) Where the collateral is consumer goods, at any time before the secured party, under section 63 has disposed of the collateral or contracted for such disposition or before the secured party under subsection 65 (6) shall be deemed to have irrevocably elected to accept the collateral, the debtor may reinstate the security agreement by paying,

- (a) the sum actually in arrears, exclusive of the operation of any acceleration clause, and by curing any other default which entitles the secured party to dispose of the collateral; and
- (b) a sum equal to the reasonable expenses referred to in clause 63 (1) (a) incurred by the secured party.

Limitation

(3) The right to reinstate under subsection (2) may not be exercised more than once during the term of the security agreement, unless the District Court, on the application of the debtor, orders otherwise. *New.*

PART VI

MISCELLANEOUS

Court orders
and
directions

67.—(1) Upon application to the Supreme Court or to the District Court by a debtor, a creditor of a debtor, a secured

party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this section, the court may,

- (a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with Part V, section 17 or subsection 34 (3) or 35 (4);
- (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under Part V, section 17 or subsection 34 (3) or 35 (4);
- (c) make any order necessary to determine questions of priority or entitlement in or to the collateral or its proceeds;
- (d) relieve any party from compliance with the requirements of Part V, section 17 or subsection 34 (3) or 35 (4), but only on terms that are just for all parties concerned;
- (e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned; and
- (f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party. R.S.O. 1980, c. 375, s. 63 (1), *amended*.

(2) Where a person fails to discharge any duties or obligations imposed upon the person by Part V, section 17 or subsection 34 (3) or 35 (4), the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and, where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of \$500 or the actual loss or damages. R.S.O. 1980, c. 375, s. 63 (2), *amended*.

Compensation for loss or damages

(3) Except as otherwise provided in this Act, any provision in any security agreement which purports to exclude any duty or obligation imposed under this Act or to exclude or limit lia-

Void provisions

bility for failure to discharge duties or obligations imposed by this Act is void. *New.*

Removal into
Supreme
Court

(4) Where an application under subsection (1) is made to the District Court, a respondent, by notice served on the applicant and on the other respondents, if any, and filed with proof of service with the local registrar of the District Court at least two days before the hearing date of the application, may require the application to be removed into the Supreme Court. R.S.O. 1980, c. 375, c. 63 (3), *amended.*

Transmission
of papers

(5) Upon the filing of the notice with proof of service, the local registrar of the District Court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county or district in which the application was commenced, and the application shall continue as if it had commenced in the Supreme Court. R.S.O. 1980, c. 375, s. 63 (4, 5), *amended.*

Service of
notices, etc.

68.—(1) Where under this Act, a notice or any other document may be or is required to be given or delivered to or served on,

- (a) a secured party named in a registered financing statement or financing change statement, the notice or document may be given to or served on the secured party by personal service or by registered mail at the most recent address of the secured party as shown in the financing statement or financing change statement; and
- (b) a debtor by a secured party, the notice or document may be given to or served on the debtor by personal service or by registered mail at the last address of the debtor known to the secured party.

Idem

(2) Where under this Act, a notice or any document may be or is required to be given or delivered to or served on a person, other than a person to whom subsection (1) applies, the notice or document may be given to or served on,

- (a) an individual, by personal service or by registered mail addressed to the individual at his or her residence or place of business and, if the individual has more than one residence or place of business, at any one of the residences or places of business;
- (b) a partnership,
 - (i) by personal service,

- (A) upon any one or more of the partners,
or
 - (B) upon any person having control or management of the partnership business at the principal place of business of the partnership, or
- (ii) by registered mail addressed to,
- (A) the partnership,
 - (B) any one or more of the general partners,
 - (C) any person having control or management of the partnership business,
- at the principal address of the partnership;
- (c) a municipal corporation by delivery or registered mail addressed to its head of council or chief administrative officer at its principal office;
 - (d) a local board, as defined in the *Municipal Affairs Act*, by delivery or registered mail addressed to its chairman or chief administrative officer at its principal office; R.S.O. 1980,
c. 303
 - (e) a corporation, other than a municipal corporation or a local board thereof,
 - (i) by serving any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business, or
 - (ii) by registered mail addressed to the address of its registered or head office;
 - (f) upon Her Majesty in right of Ontario, unless the regulations otherwise provide, by delivery or registered mail addressed to the registrar at the central office of the registration system.

(3) Where an individual, partnership or body corporate resides or has its principal office or its registered or head office out of Ontario but is carrying on business in Ontario, a notice or document referred to in subsection (2) may be given, delivered or served by serving any person carrying on the business in Ontario and in the case of an extra-provincial com- Out of
province

pany, by serving the attorney for service in Ontario and such service may be by personal service or by registered mail at the address of the person or attorney.

Service by
registered
mail

(4) A notice or document given or served by registered mail shall be deemed to have been given, delivered or served when the addressee actually receives the notice or document, or, except for the purposes of subsection 33 (1), upon the expiry of ten days after the day of registration, whichever is earlier.

Court
documents

(5) Any notice or other document to be served on any person in relation to a proceeding in a court shall be served in accordance with the rules of the court and subsections (1) to (4) do not apply to any such notice. *New.*

Knowledge
and notice

69. For the purposes of this Act, a person learns or knows or has notice or is notified when service is effected in accordance with section 68 or the regulations or when,

- (a) in the case of an individual, information comes to his or her attention under circumstances in which a reasonable person would take cognizance of it;
- (b) in the case of a partnership, information has come to the attention of one or more of the general partners or of a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) in the case of a corporation, other than a municipal corporation or local board thereof, information has come to the attention of a senior employee of the corporation with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it. *New.*

Extension or
abridgment
of time

70. Where in this Act, other than in sections 5, 6, 7 and 12 and in Parts III and IV and in this Part, a time prescribed within which or before which any act or thing must be done, the District Court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the court considers just. *New.*

Destruction
of books,
etc.

71.—(1) The registrar may authorize the destruction of books, documents, records or paper, including those related to a prior law as defined in Part VII,

- (a) that have been microfilmed; or
- (b) that in the registrar's opinion need not be preserved any longer. R.S.O. 1980, c. 375, s. 68 (1), *amended*.

(2) The registrar may remove from the central file of the registration system information related to a financing statement or financing change statement,

Removal of
information
from
registration
system

- (a) if the financing statement is no longer effective;
- (b) upon the receipt of a financing change statement discharging the registration of a financing statement;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a financing statement or a financing change statement. R.S.O. 1980, c. 375, s. 68 (2), *amended*.

(3) The registrar, upon notice to the secured party, may remove from the central file of the registration system information related to a financing change statement if,

Idem

- (a) it does not set out the correct registration or file number of the financing statement or financing change statement to which it relates; or
- (b) it does not set out the name of the debtor as that name is set out in the financing statement or financing change statement to which it relates.

(4) Where the destruction of a document has been authorized under subsection (1), the registrar, instead of destroying the document, may release the document to the secured party or the secured party's agent. *New*.

Idem

72. Except in so far as they are inconsistent with the express provisions of this Act, the principles of law and equity, including the law merchant, the law relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, shall supplement this Act and shall continue to apply. *New*.

Application
of principles
of law and
equity

73. Where there is conflict between a provision of this Act and a provision of the *Consumer Protection Act*, the provision of the *Consumer Protection Act* prevails and, where there is

Conflict with
other Acts
R.S.O. 1980,
c. 87

R.S.O. 1980,
c. 87

conflict between a provision of this Act and a provision of any general or special Act, other than the *Consumer Protection Act*, the provision of this Act prevails. R.S.O. 1980, c. 375, s. 69.

Regulations

74. The Lieutenant Governor in Council may make regulations,

- (a) designating branch offices;
- (b) prescribing the duties of the registrar and branch registrars;
- (c) prescribing business hours for the offices of the registration system or any of them;
- (d) respecting the registration system and searches thereof;
- (e) requiring the payment of fees and prescribing the amounts thereof;
- (f) prescribing the amount of any charge to which a secured party is entitled for any statement or copy provided pursuant to section 18;
- (g) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (h) requiring that the forms to be used shall be those provided or approved by the registrar;
- (i) governing the time assigned to the registration of financing statements and financing change statements;
- (j) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;
- (k) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (l) prescribing additional methods of serving notices and other documents for the purposes of section 68 and prescribing methods of serving notices and

other documents on persons not referred to in section 68;

- (m) prescribing the portion of the fees received under this Act that shall be paid into The Personal Property Security Assurance Fund;
- (n) defining “motor vehicle”;
- (o) prescribing a lexicon of French-English terms to be used in connection with prescribed forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law. R.S.O. 1980, c. 375, s. 70 (1); 1981, c. 58, s. 5 (1), *amended*.

PART VII

APPLICATION, TRANSITION, AMENDMENTS, REPEALS, COMMENCEMENT

75. In this Part, “prior law” means,

Definition

- (a) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement was one to which *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, being chapters 33, 45 and 76, respectively, of the Revised Statutes of Ontario, 1970, or the predecessors thereof, applied;
- (b) the law related to a security agreement made before the day this section comes into force where the security agreement was one to which the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or predecessor thereof, applied;
- (c) the law related to a security agreement made before the 1st day of April, 1976, where the security agreement is not a security agreement described in clause (a) or (b). *New*.

76.—(1) Except as otherwise provided in this Part, this Act applies, Application
of Act

- (a) to every security agreement made on or after the day this section comes into force; and

- (b) to every security agreement made on or after the 1st day of April, 1976 if the security agreement was one to which the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, applied immediately before the repeal of that Act.

Idem

(2) Except as otherwise provided in this Part, this Act does not apply,

- (a) to a security agreement to which a prior law applied at the time of its making including any advance or extension of credit, delivery of goods or other event occurring pursuant thereto whether before or after this section comes into force; or
- (b) to a transfer of chattel paper or an account, other than a transfer of a book debt, made before the coming into force of this section which does not secure payment or performance of an obligation.

Saving

(3) This Act does not affect the rights acquired by any person from a judgment or order of any court given or made before the day this Act comes into force, or affect the outcome of any litigation commenced on or before that day.

Priority of interest under R.S.O. 1980, c. 375

(4) Priority between security interests under security agreements described in clause (1) (b) shall be determined in accordance with the law as it existed immediately before this section came into force if the security interests have been continuously perfected since this section came into force. *New.*

Chattel mortgages, etc., under prior law

77.—(1) Every security agreement to which the prior law as described in clause 75 (a) applied at the time of its making continues to have such force and effect as if the Acts referred to in that clause had not been repealed if the security interest was covered by an unexpired registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this section.

Idem

(2) Where a security interest under a security agreement described in subsection (1) was not covered under an unexpired registration immediately before the coming into force of this section, the security interest may be perfected by the registration of a financing statement.

Application of Part IV

(3) Part IV applies to the perfection, continuation of perfection and reperfecting of a security interest under a security agreement to which subsection (1) or (2) applies.

(4) Where before the coming into force of this section, a secured party under a security agreement to which the prior law as described in clause 75 (a) applied at the time of its making failed to register a financing change statement after learning of the transfer of collateral and the information required to register a financing change statement or after learning of the change of name and the new name of the debtor, the secured party shall register a financing change statement recording the transfer or the new name of the debtor, as the case may be, within twenty-four months of the coming into force of this section.

Where certain changes have not been recorded

(5) Where a secured party fails to register a financing change statement under subsection (4) by the end of the period referred to in that subsection, the security interest created by the security agreement shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the name of the transferee or the changed name of the debtor, as the case may be. *New.*

Effect of failure to comply

78.—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, (collectively referred to in this section as the former Act) that was registered under the former Act before the coming into force of this section, continues to have such force and effect as if the former Act had not been repealed and except as provided in this section and sections 43 and 44, this Act does not apply to any such mortgage, charge or assignment.

Corporation securities

(2) Where a mortgage, charge or assignment, the registration of which was provided for in the former Act, was made before the coming into force of this section but was not registered under that Act,

Idem

- (a) this Act shall be deemed always to have applied to the mortgage, charge or assignment; and
- (b) the security interest created by the mortgage, charge or assignment may be perfected under this Act.

(3) The registrar shall, with respect to each mortgage, charge and assignment, and each assignment thereof, registered under the former Act for which no certificate of discharge has been registered as of the day this section comes

Entries in registration system

into force, enter into the central file of the registration system established for the purposes of this Act,

- (a) the name of the debtor as shown in the registration under the former Act;
- (b) the registration number under the former Act; and
- (c) the following notation:

This registration was made under the *Corporation Securities Registration Act* (R.S.O. 1980, c. 94) or a predecessor thereof. A copy of the instrument is available for inspection in the offices of the Ministry of Consumer and Commercial Relations located at
(address of appropriate office)
.....

Discharged
registrations

(4) Mortgages, charges and assignments, and assignments thereof, registered under the former Act for which a certificate of discharge has been registered before the coming into force of this section shall not be entered into the registration system established for the purposes of this Act.

Registration
period

(5) A registration entered into the central file of the registration system under subsection (3) expires when it is discharged in accordance with this section.

Change of
name of
debtor

(6) Where before the coming into force of this section and after the original registration under the former Act the debtor changed its name and the secured party learned of the change before the coming into force of this section, the secured party shall register a financing change statement recording the change of name within twenty-four months of the coming into force of this section.

Effect of
failure to
comply

(7) Where a secured party fails to register a financing change statement under subsection (6) by the end of the period referred to in that subsection, the security interest created by the mortgage, charge or assignment shall be subordinate to the interest of any person without knowledge of the security interest who has subsequently acquired rights in the collateral and has relied upon a search made in the central file of the registration system in the changed name of the debtor.

Discharge

(8) A secured party may discharge in whole or in part a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under

subsection (3) by the registration of a financing change statement.

(9) The debtor or any person having an interest in the collateral may make an application to the District Court for an order discharging or partially discharging a mortgage, charge or assignment or any assignment thereof entered into the central file of the registration system under subsection (3). Order for discharge

(10) Upon hearing an application made under subsection (9) and upon being satisfied that no security interest was created or that the security interest is released or partially released, the court may order, Idem

(a) that the registration be discharged where no security interest was ever created or the security interest has been released; or

(b) that a financing change statement be registered where the security interest is partially released.

(11) The registrar may remove from the registration system information related to a registration, upon receipt of, Removal of information from registration system

(a) a financing change statement under subsection (8) that wholly discharges the registration entered into the central file of the registration system under subsection (3); or

(b) a certified copy of an order made under clause (10) (a).

(12) Subsection 30 (6) and sections 47, 48, 49 and 50, except subsections 48 (1) and (2), apply to the perfection, continuation of perfection and reperfecting of a security interest under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3). Application of ss. 30 (6), 47-50

(13) Where there is a default under a mortgage, charge or assignment entered into the central file of the registration system under subsection (3), the secured party may elect to enforce the security agreement in accordance with Part V by stating in the notice referred to in subsection 63 (4) or 65 (2) that the secured party has elected to be bound by Part V. Election re: enforcement of security agreements

(14) Subsections (6) and (12) do not apply so as to require a trustee under a trust indenture to file a financing change statement recording the change of a debtor's name unless after the coming into force of this section the trust indenture is amended. *New.* Trust indentures

Saving,
certain
corporation
securities

79.—(1) A mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, shall not be invalid by reason only that it was not registered under that Act, if the security interest created by the mortgage, charge or assignment was perfected by registration in compliance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, and the said *Personal Property Security Act* shall be deemed to have applied to the security interest so created from its creation and upon the coming into force of this Act, this Act applies to the security interest. 1981, c. 2, s. 1, *amended*.

Idem

(2) Subsection (1) applies even if after the perfection of a security interest by registration under the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, the mortgage, charge or assignment was registered under the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof. *New*.

Dual
registration

(3) Despite subsections (1) and (2), where,

(a) a security agreement created or provided for both,

(i) a security interest in any class or classes of collateral and the security interest was a mortgage, charge or assignment, the registration of which was provided for in the *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980, or a predecessor thereof, and

(ii) a security interest in collateral other than collateral described in subclause (i) and the security interest was not a mortgage, charge or assignment, the registration of which was provided for in the said *Corporation Securities Registration Act*, or a predecessor thereof; and

(b) regardless of which occurred first,

(i) the mortgage, charge or assignment described in subclause (a) (i) was registered under the said *Corporation Securities Registration Act*, or a predecessor thereof, and

- (ii) a financing statement was registered under a predecessor of this Act in relation to the security interest described in subclause (a) (ii) and the financing statement and the financing change statements, if any, in relation thereto, do not claim a security interest in the collateral described in subclause (a) (i),

the said *Corporation Securities Registration Act* and this Act, except subsections (1) and (2) applies to the security interest described in subclause (a) (i) and the predecessor of this Act and this Act applies to the security interest described in subclause (a) (ii). *New.*

R.S.O. 1980,
c. 94

80.—(1) Upon the request of any person and upon payment of the prescribed fee, a document registered under a prior law shall be provided for inspection unless the document has been destroyed.

Inspection of
prior law
documents

(2) Upon the request of any person and upon payment of the prescribed fee, the registrar shall furnish the person with a certified copy of a document registered under a prior law unless the document has been destroyed. R.S.O. 1980, c. 375, s. 66 (2), *amended.*

Copies of
documents

(3) A certified copy provided under subsection (2) is *prima facie* proof of the contents of the document so certified. *New.*

Idem

81. Except as provided in subsections 78 (7) and (12), the order of priorities between a security interest created under a prior law and any other security interest shall be determined without regard to the priority rules set out in this Act. *New.*

Priorities

82.—(1) A financing statement or financing change statement prepared in accordance with the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980 and the regulations thereunder, as they read immediately before the repeal of that Act, shall be accepted for registration if it is received by the registrar or a branch registrar within thirty days of the day this section comes into force.

Use of old
forms

(2) Every financing statement or financing change statement received by the registrar or a branch registrar before the repeal of the *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980, or received under subsection (1) expires on the expiry of the third anniversary of its registration or, in the case of a financing change statement that does not extend a period of registration, with

Period of
registration

the expiry of the financing statement to which it relates and may be renewed under this Act. *New.*

83. Section 26 of the *Execution Act*, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Taking
security
interests in
personal
property in
execution
R.S.O. 1980,
c. 375

26.—(1) Where an execution debtor is a secured party and the security interest is perfected by registration under the *Personal Property Security Act*, upon payment of the proper fees, a sheriff may seize the security interest by registering a financing change statement under that Act in the form prescribed thereunder recording the seizure of the security interest and the sheriff, after registering the financing change statement, may sell the execution debtor's security interest.

Effect of
registration

(2) Upon the registration of the financing change statement referred to in subsection (1), the security interest of the execution debtor is bound by the execution, and the registration is notice of the execution and seizure to all persons who may thereafter acquire an interest in the security agreement or the property subject to the security interest and the rights of the sheriff and the execution creditor have priority over the rights of all persons who subsequently acquire an interest in the security agreement.

Service of
notice on
debtor

(3) The debtor under a security agreement is not affected by a seizure under this section unless a notice of the seizure has been served upon the debtor, and any payment made by the debtor under the security agreement to the secured party before such service shall be valid.

Payment to
sheriff

(4) After the debtor has been served with a notice of seizure under subsection (3), the debtor shall pay to the sheriff all money then payable and, as it becomes due, all money that may become payable under the security agreement so far as may be necessary to satisfy the execution.

Payments
made after
notice

(5) Any payment made to the secured party after service of the notice of seizure under subsection (3) or after actual knowledge of the seizure is void as against the sheriff and the execution creditor.

When seizure
no longer
effective

(6) Where a financing change statement has been registered under subsection (2) and the execution has expired or is satisfied, set aside or withdrawn, the sheriff shall register a financing change statement under the *Personal Property Security Act* in the form prescribed thereunder recording the fact that the seizure of the security interest is no longer effective.

R.S.O. 1980,
c. 375

(7) In addition to the remedies provided in this Act, upon seizure of the security interest, the sheriff has all the rights and remedies of the execution debtor under the security agreement and the *Personal Property Security Act*, and the sheriff is entitled to a bond of indemnity sufficient to indemnify against all costs and expenses to be incurred by the sheriff in the enforcement of the security agreement.

Rights and remedies of sheriff

(8) On and after the day sections 68 and 69 of the *Personal Property Security Act, 1989* come into force, the references to the *Personal Property Security Act* in subsections (1), (6) and (7) shall be deemed to be references to the *Personal Property Security Act, 1989*.

Transition

1989, c. 16

84.—(1) The following Acts are repealed:

Repeals

1. The *Personal Property Security Act*, being chapter 375 of the Revised Statutes of Ontario, 1980.
2. The *Personal Property Security Amendment Act, 1981*, being chapter 2.
3. The *Personal Property Security Amendment Act, 1981 (No. 2)*, being chapter 58.
4. The *Bills of Sale Act*, being chapter 43 of the Revised Statutes of Ontario, 1980.
5. The *Corporation Securities Registration Act*, being chapter 94 of the Revised Statutes of Ontario, 1980.

(2) No sale of goods to which the *Bills of Sale Act* applied before its repeal shall be void for failure to comply with that Act.

Transition

R.S.O. 1980, c. 43

(3) Subsection (2) does not affect the rights acquired by any person from a judgment or order of any court before the day this Act comes into force or affect the outcome of any litigation commenced on or before the 8th day of June, 1988.

Idem

85. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commencement

86. The short title of this Act is the *Personal Property Security Act, 1989*.

Short title

Bill 152

An Act to revise and consolidate the Law related to Repairers' and Storers' Liens

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading June 8th, 1988

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The principal purpose of the Bill is to clarify the right of repairers and storers to claim a lien for articles that they have repaired, stored or repaired and stored.

Traditional possessory lien rights are preserved and codified (Part I). New non-possessory lien rights are established whereby a repairer or storer will be able to return an article to the person who has the right to claim the article without loss of lien rights (Part II).

Among the features of the Bill are the following:

1. The Act binds the Crown (section 2).
2. A non-possessory lien will be enforceable against third parties only if a claim for lien is registered under the registration system established under the *Personal Property Security Act* (subsections 9 (1) and 10 (1)).
3. Priority disputes between lien claimants and other persons with interests in articles will be governed by rules set out in the Act (section 6, subsections 7 (3), 10 (1) and 16 (1)).
4. Procedures are established for the sale or retention of an article by a lien claimant and for redemption of the article by the owner or other persons with an interest in the article (sections 15, 17 and 22).
5. A lien claimant will be permitted to donate an article to a registered charity where the repair or storage charges have remained unpaid for twelve months and they exceed the value of the article (section 19).
6. A procedure is established for persons to recover possession of their articles when there is a dispute as to the price of the repair or storage services (section 24).
7. The *Mechanics' Lien Act*, the *Unclaimed Articles Act* and the *Warehousemen's Lien Act* will be repealed on proclamation by the Lieutenant Governor (section 36).

Bill 152

1988

An Act to revise and consolidate the Law related to Repairers' and Storers' Liens

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“article” means an item of tangible personal property other than a fixture;

“lien claimant” means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

1988, c. ... “motor vehicle” means a motor vehicle as defined in the regulations made under the *Personal Property Security Act, 1988*;

“prescribed” means prescribed by a regulation made under this Act;

“registrar” and “branch registrar” mean, respectively, the registrar and a branch registrar under the *Personal Property Security Act, 1988*;

“repair” means an expenditure of money or the application of labour, skill or materials, to an article for the purpose of altering, improving or restoring its properties or maintaining its condition and includes,

- (a) the transportation of the article for purpose of making a repair,
- (b) the towing of an article,
- (c) the salvage of an article;

“repairer” means a person who makes a repair on the understanding that the person will be paid for the repair;

“storer” means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

Repair, etc.,
by third
party

(2) The following rules apply where an article is left for repair, storage or storage and repair and the article is forwarded by the person with whom the article is left to some other person for the repair, storage or storage and repair:

1. The person with whom the article was left shall be deemed to have performed the services and to be entitled to the rights of a repairer or storer against the person who left the article unless,
 - i. there is a written agreement between the person who left the article and the person with whom it was left that there is no lien, or

- ii. the person with whom the article was left has agreed to act as agent for the person who left the article in forwarding it to an identified repairer or storer for the repair, storage or storage and repair.

2. Unless subparagraph ii of paragraph 1 applies, the person to whom the article was forwarded does not have a lien under this Act.

2. This Act binds the Crown.

Act binds
Crown

PART I

POSSESSORY LIENS

3.—(1) In the absence of a written agreement to the contrary, a repairer has a lien against an article that the repairer has repaired for an amount equal to,

Repairer's
lien

- (a) the amount that the person who requested the repair agreed to pay;
- (b) where no such amount has been agreed upon, the fair value of the repair; or
- (c) where only part of a repair is completed, the fair value of the part completed,

and the repairer may retain possession of the article until the amount is paid.

(2) A repairer's lien arises and takes effect when the repair is commenced.

When lien
arises

(3) A repairer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period following the day,

Disposition

- (a) on which the amount required to pay for the repair comes due; or
- (b) on which the repair is completed, if no date is stated for when the amount required to pay for the repair comes due.

(4) For the purposes of this Act, a repairer who commences the repair of an article that is not in the repairer's actual possession shall be deemed to have gained possession of the arti-

Deemed
possession

cle when the repair is commenced and shall be deemed to have given up possession when the repair is completed or abandoned.

Idem

(5) A repairer who, under subsection (4), is deemed to have possession of an article may remove the article from the premises on which the repair is made.

Storer's lien

4.—(1) Subject to subsection (2), a storer has a lien against an article that the storer has stored or stored and repaired for an amount equal to,

- (a) the amount agreed upon for the storage or storage and repair of the article;
- (b) where no such amount has been agreed upon, the fair value of the storage or storage and repair, including all lawful claims for money advanced, interest on money advanced, insurance, transportation, labour, weighing, packing and other expenses incurred in relation to the storage or storage and repair of the article,

and the storer may retain possession of the article until the amount is paid.

Limit on
storer's lien

(2) A storer is not entitled to a lien for a repair made to an article unless the repair is made by the storer on the understanding that the storer would be paid for the repair or unless subsection 28 (2) applies.

When lien
arises

(3) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair.

Notice to
owner, etc.,
in certain
cases

(4) Where the storer knows or has reason to believe that possession of an article subject to a lien was received from a person other than,

- (a) its owner; or
- (b) a person having its owner's authority,

the storer, within sixty days after the day of receiving the article, shall give written notice of the lien,

- (c) to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registra-

tion under the *Personal Property Security Act, 1988* 1988, c. ...
against the name of the person whom the storer
knows or has reason to believe is the owner; and

(d) in addition to the notices required by clause (c)
where the article is a vehicle,

(i) to every person who has a registered claim for
lien against the article under Part II of this
Act,

(ii) to every person who has a security interest in
the vehicle that is perfected by registration
under the *Personal Property Security Act, 1988* against the vehicle identification number
of the vehicle, and

(iii) if the vehicle is registered under the *Highway Traffic Act*, to the registered owner. R.S.O. 1980,
c. 198

(5) A notice under subsection (4) shall contain,

Contents of
notice

(a) a description of the article sufficient to enable it to
be identified;

(b) the address of the place of storage, the date that it
was received and the name of the person from
whom it was received;

(c) a statement that a lien is claimed under this Act by
the storer in respect of the article; and

(d) a statement advising how the article may be
redeemed.

(6) Where a storer fails to give the notice required by sub-
section (4), the storer's lien as against the person who should
have been given the notice is limited to the unpaid amount
owing in respect of the period of sixty days from the date
when the article was received, and the storer shall surrender
possession of the article to that person where the person
proves a right to possession and pays that amount.

Effect of
failure to
give notice

(7) The storer has the right to sell an article that is subject
to a lien in accordance with Part III (Redemption, Sale or
Other Disposition) upon the expiration of the sixty-day period
following the day on which the amount required to pay for the
storage or storage and repair becomes due.

Disposition

Loss of lien

5. A lien under this Part is discharged and cannot be revived as an interest in the article if possession of the article that is subject to the lien is surrendered to, or lawfully comes into the possession of, the owner or any other person who is entitled to receive a notice under subsection 15 (2).

Priority of lien

6. A lien under this Part has priority over the interests of all other persons in the article.

PART II

NON-POSSESSORY LIENS

Non-possessory lien

7.—(1) A lien claimant who is entitled to a lien under Part I (Possessory Liens) against an article, and who gives up possession of the article without having been paid the full amount of the lien to which the lien claimant is entitled under Part I, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed under Part I that remains unpaid.

When lien arises

(2) A non-possessory lien arises and takes effect when the lien claimant gives up possession of the article.

Priority

(3) A non-possessory lien has priority over the interest in the article of any other person other than a lien claimant who is claiming a lien under Part I, and, where more than one non-possessory lien is claimed in the same article, priority shall be determined according to the same rules of priority as govern the distribution of proceeds under section 16.

Period of credit not to affect lien

(4) A non-possessory lien is not extinguished by reason only that the lien claimant has allowed a period of credit for the payment of the debt to which the lien relates.

Acknowledgment of indebtedness required

(5) A non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be on an invoice or other statement of account.

Idem

(6) An acknowledgment of indebtedness under subsection (5) is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount that the lien claimant is owed.

Transactions in ordinary course of business

8.—(1) A buyer of an article from a seller who sells it in the ordinary course of business takes it free of any non-possessory lien of a lien claimant whose lien arose from its repair or storage at the request of the seller or the seller's

agent, unless the buyer signs an acknowledgment referred to in subsection 7 (5).

(2) Notwithstanding that a buyer has signed an acknowledgment as provided in subsection (1), a purchaser purchasing the article in the ordinary course of the buyer's business takes it free of the lien claimant's lien. Idem

9.—(1) A claim for lien or change statement to be registered under this Part shall be in the prescribed form and may be tendered for registration at a branch office established under Part IV of the *Personal Property Security Act, 1988*, or by mail addressed to an address prescribed under that Act. Registration of documents
1988, c. ...

(2) A claim for lien or change statement is not invalidated nor is its effect impaired by reason only of error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission. Errors in documents

10.—(1) A non-possessory lien is enforceable against third parties only if a claim for lien has been registered, and, where a person acquires a right against an article after a non-possessory lien arises, the right of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the right. Claim for lien

(2) A claim for lien may relate to more than one article and may be registered at any time after an acknowledgment of indebtedness has been signed. Idem

(3) A claim for lien is effective from the time assigned to its registration by the registrar or branch registrar and expires at, and cannot be renewed after, the end of the earlier of, Idem

(a) the end of the registration period set out in the claim for lien or in the most recent change statement related to the claim for lien; and

(b) the third anniversary of the registration of the claim for lien.

(4) The registration period set out in a claim for lien or change statement may be extended by filing a change statement before the end of the registration period. Idem

(5) A change statement may be registered to record an assignment of a registered claim for lien. Assignment

Idem

(6) Where a claim for lien has not been registered and the lien claimant has assigned the non-possessory lien before the registration of the claim for lien, a claim for lien may be registered,

- (a) naming the assignor as the lien claimant and subsection (5) applies; or
- (b) naming the assignee as the lien claimant and subsection (5) does not apply.

Changes in information

(7) An error or omission in a claim for lien or change statement may be corrected or a change of the name or address of a lien claimant, assignee or owner may be recorded by registering, at any time during the registration period, a change statement recording the correction or change.

Change statements

11. The registration of a change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registration of the claim for lien to which it relates is effective.

Discharge

12.—(1) A non-possessory lien is discharged and cannot be revived as an interest in the article,

- (a) upon payment to the lien claimant of the amount of the lien claimed;
- (b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;
- (c) upon the order of a court;
- (d) upon the registration of a change statement recording the discharge;
- (e) upon the expiry of the registration period of the claim for lien; and
- (f) if the article is a motor vehicle, upon a change of ownership of the vehicle if a claim for lien was not registered before the change of ownership occurred.

Partial discharge

(2) Where a claim for lien relates to more than one article and it is agreed to release one or more, but not all, of the articles from the lien, a change statement recording the release may be registered.

(3) Where a release described in subsection (2) is given, any person may, by written request, require the lien claimant to deliver to the person making the request a change statement recording the release.

Idem

(4) Within thirty days after a registered claim for lien is discharged under clause (1) (a), (b), (c) or (f) or within thirty days of a request being made under subsection (3), the lien claimant shall register a change statement recording the discharge or partial discharge.

Time limit

(5) Where a lien claimant fails to comply with subsection (4), the claimant, on written notice from the owner or other person with an interest in the article, shall pay the owner or other person \$100 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

Penalty

13. Upon application to the District Court, the court may order the registrar to amend the information recorded in the central file of the registration system to indicate that the registration of a claim for lien has been discharged or has been partially discharged, upon any grounds and subject to any conditions that the court considers appropriate in the circumstances.

Correction of registrar's records

14.—(1) A lien claimant who has a non-possessory lien and who has registered a claim for lien may deliver at any time to the sheriff of the county or district in which the article is located a copy of the registered claim for lien and a direction to seize the article.

Seizure of article

(2) Upon receipt of a copy of a registered claim for lien and a direction to seize an article under subsection (1), the sheriff shall seize the article described in the direction wherever it may be found and shall deliver it to the lien claimant who issued the direction.

Idem

(3) Nothing in subsection (1) or (2) prevents a lien claimant from exercising any lawful power of seizure with respect to the article whether provided for by contract or otherwise available to the lien claimant by law.

Other powers of seizure not affected

(4) An article shall not be seized if it is in the possession of a lien claimant who claims to be entitled to a lien against it under Part I (Possessory Liens).

Limitation

(5) A lien claimant who has a non-possessory lien against an article has a right to sell the article in accordance with Part III (Redemption, Sale or Other Disposition) if,

Disposition

- (a) the article has been seized and is in the possession of the lien claimant;
- (b) at least sixty days have expired since the day when the non-possessory lien arose; and
- (c) any part of the amount to which the lien relates is due but unpaid.

PART III

REDEMPTION, SALE OR OTHER DISPOSITION

Sale of
article

15.—(1) A lien claimant who has a right, under this Act, to sell an article shall not exercise that right unless the lien claimant has given notice of intention to sell the article.

Idem

(2) A notice of intention to sell an article shall be in writing and shall be given at least fifteen days before the sale to,

- (a) the person from whom the article was received for repair, storage or storage and repair;
- (b) where the article was received for repair, storage or storage and repair from a person other than the owner,

- (i) the person who is the registered owner of the article, if the article is a motor vehicle, or

- (ii) the person the lien claimant knows or has reason to believe is the owner, if the article is not a motor vehicle;

1988, c. ...

- (c) every person who has a security interest in the article under the *Personal Property Security Act, 1988* that is perfected by registration against,

- (i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

- (ii) the vehicle identification number, if the article is a motor vehicle; and

- (d) every person who has registered a claim for lien under Part II (Non-possessory Liens) against,

- (i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

- (ii) the vehicle identification number, if the article is a motor vehicle.

(3) The notice required by subsection (2) shall contain,

Contents of
notice

- (a) a description of the article sufficient to enable it to be identified;
- (b) a statement of the amount required to satisfy the lien, as of the time when the notice is given, and any costs of seizure;
- (c) a statement of the method of calculating, on a daily basis, any further costs for storage or preservation of the article that may be incurred between the time when the notice is given and the time when the sale is to take place;
- (d) a statement that the article may be redeemed by any person entitled to receive notice by payment of the amount determined under clauses (b) and (c) plus any other reasonable costs incurred in preparing the article for sale;
- (e) a statement of,
 - (i) the name of the person to whom payment may be made,
 - (ii) the address where the article may be redeemed,
 - (iii) the times during which redemption may be made,
 - (iv) the telephone number, if any, of the person giving notice;
- (f) a statement of the date, time and place of any public sale at which the article is to be sold, or the date after which any private sale of the article is to be made; and
- (g) a statement that the article may be sold unless it is redeemed on or before the day required to be specified in the notice by clause (f).

(4) The article may be sold in whole or in part, by public or private sale, at any time and place, on any terms, so long as every aspect of the sale is commercially reasonable.

Method of
sale

Purchase by
lien claimant

(5) The lien claimant may purchase the article only at a public sale.

Proceeds of
sale

16.—(1) Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,

- (a) to the reasonable expenses of selling the article;
- (b) to the costs of seizure;
- (c) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of the lien claimant making the sale;
- (d) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;
- (e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;
- (f) to the payment of every person who has a perfected security interest in the article under the *Personal Property Security Act, 1988* who was entitled to notice under subsection 15 (2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and

- (g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.

(2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23.

Payment into court

17.—(1) A lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15 (2).

Retention of article

(2) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the proposal within sixty days of the receipt of the proposal, the lien claimant, subject to subsections (3) and (4), shall sell the article in accordance with section 15.

Objection

(3) Upon application to the District Court and upon notice to every person who has given a written objection to the proposal, the court may order that the objection is ineffective because,

Application to District Court

- (a) the objection was made for a purpose other than the protection of the interest in the article of the person who made the objection; or
- (b) the fair market value of the article is less than the amount of the lien of the lien claimant and the estimated expenses to which the lien claimant is entitled under this Act.

(4) If no effective objection is made, the lien claimant, at the expiration of the sixty-day period mentioned in subsection (2), shall be deemed to have irrevocably elected to retain the article and thereafter is entitled to hold or dispose of the article free from the rights and interests of every person to whom the written notice of the proposal was given.

Foreclosure

18. Where a lien claimant,

- (a) sells an article under section 15; or
- (b) is deemed to have elected irrevocably to retain the article under subsection 17 (4),

Effect of sale or foreclosure; amount of lien deemed satisfied

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

Gift to
charity

19.—(1) A lien claimant who has retained possession of an article for twelve months after the right to sell the article arose may give the article to a charity registered under the *Income Tax Act* (Canada) if,

R.S.C. 1952,
c. 148

- (a) the article has a fair market value of less than the total of the amount of the lien claimed by the lien claimant and the amount of the estimated expenses to which the lien claimant is entitled under this Act; and
- (b) the lien claimant has not given a notice of intention to sell under section 15 or a notice of a proposal to retain the article under section 17.

Records to
be
maintained

(2) A lien claimant who disposes of an article under this section shall maintain for six years a record of the article disposed of and the charity to which it was given.

Effect of
disposition
on title of
article

20.—(1) Although a lien claimant has failed to comply with this Part, a purchaser who buys an article in good faith,

- (a) in a sale under section 15; or
- (b) from a lien claimant who has retained an article under section 17,

acquires the article free of the interest of the owner and any person entitled to notice under this Part.

Idem

(2) A charity that is given an article by a lien claimant under section 19, acquires the article free of the interest of the owner and all other persons.

Liability of
lien claimant
for non-
compliance

21. A lien claimant who fails to comply with the requirements of this Part is liable to any person who suffers damages as a result and shall pay the person an amount equal to the greater of \$200 or the actual damages.

Redemption
of article

22. At any time before the lien claimant,

- (a) has sold the article under section 15 or contracted for such sale;
- (b) is deemed to have irrevocably elected to retain the article under section 17; or

- (c) has given the article to a charity under section 19,

the owner and any person referred to in subsection 15 (2) may redeem the article by paying the amount required to satisfy the lien.

PART IV

DISPUTE RESOLUTION

23.—(1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to, Determination of rights by court

- (a) the seizure of an article under Part II (Non-possessory Liens) or any right of seizure in respect of an article;
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,

and the court may make such order as it considers necessary to give effect to those rights.

(2) An application shall not be made under clause (1) (d) Limitation where an application has been made under section 24.

24.—(1) Where a lien is claimed under Part I (Possessory Liens) and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, and there is, Possessory liens; return of article

- (a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair;
- (b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article; or

- (c) a dispute concerning the right of the lien claimant to retain possession of the article,

the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

Respondent (2) The lien claimant shall be named as the respondent in the application.

Form (3) The application shall be in the prescribed form and may include an offer of settlement.

Payment into court (4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.

Initial certificate (5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the prescribed form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and where applicable, indicating the portion of that amount that is offered in settlement of the dispute.

Release on interim certificate (6) The applicant shall give the initial certificate to the respondent who, within three days of receiving the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the prescribed form.

Final certificate (7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the prescribed form and under the seal of the court.

Release on final certificate (8) The applicant shall give the final certificate to the respondent who, upon receiving the final certificate, shall release immediately the article described therein.

(9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff to seize the article and, upon receipt of the writ, the sheriff shall seize the article and return it to the applicant.

Writ of seizure

(10) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff under a writ of seizure, the respondent may demand a receipt in the prescribed form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the prescribed form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.

Payment out of court of settlement

(11) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.

Notice to applicant

(12) Where the article is released to the applicant by the respondent or is seized by the sheriff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge upon the amount paid into court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.

Substitution of security

(13) Where, within ninety days of the date when the article was returned to the applicant or seized, the respondent has not,

Return of security

(a) accepted the applicant's offer of settlement; or

(b) commenced an action to recover the amount claimed,

the charge upon the money paid into court or the security posted with the court is discharged and the money paid into court shall be returned to the applicant and any security posted with the court shall be delivered up for cancellation.

25. An application under this Part may be brought in any court of appropriate monetary and territorial jurisdiction.

Proper court

PART V

GENERAL

Separate
liens

26.—(1) A separate lien arises under this Act each time an article is repaired, stored or stored and repaired.

No tacking

(2) A lien under this Act cannot be tacked onto another lien under this Act.

Service of
documents

27.—(1) A document required to be given or that may be given under this Act is sufficiently given if it is given personally to the intended recipient or if it is sent by certified or registered mail or prepaid courier to the intended recipient at,

- (a) the intended recipient's address for service if there is one;
- (b) the last known mailing address of the intended recipient according to the records of the person sending the document, where there is no address for service; or
- (c) the most recent address of the intended recipient as shown on a claim for lien or change statement registered under this Act or as shown on financing statement or financing change statement registered under the *Personal Property Security Act, 1988*.

1988, c. ...

Service by
mail

(2) A document sent to the intended recipient by certified or registered mail shall be deemed to have been given on the earlier of,

- (a) the day the intended recipient actually receives it; or
- (b) the sixth day after the day of mailing.

Lien
claimant's
rights and
obligations

28.—(1) Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

- (a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and
- (b) unless otherwise agreed,
 - (i) shall keep the article identifiable, and

- (ii) may create a security interest under the *Personal Property Security Act, 1988* in the article, but only upon terms that do not impair a right of redemption under that Act or this Act. 1988, c. ...

(2) Unless otherwise agreed, a lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of an article that is subject to a lien, including the cost of insurance and the payment of taxes or other charges incurred therefor, and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien. Reasonable expenses

(3) Except as provided in clause 4 (1) (b), a lien claimant is not entitled to a lien for interest on the amount owing with respect to an article but this subsection does not affect any right that the lien claimant may otherwise have to recover such interest. Interest

(4) A lien claimant is liable for any loss or damage caused by a failure to meet any obligation imposed by this section but does not lose the lien against the article by reason only of that failure. Effect of failure to meet obligation

(5) A lien claimant may use an article, Use of article

- (a) for the purpose of preserving the article or its value;
- (b) for the purpose of making a reasonable demonstration of the quality or properties of the article in order to facilitate the making of a sale under this Act;
- (c) in accordance with an order of any court before which an application is being heard or an action is being tried in respect of that article; or
- (d) in accordance with any agreement with the owner.

(6) Where the lien claimant uses or deals with an article in a manner not authorized by this Act, the lien claimant is liable for any loss or damage caused by that use or dealing and may be restrained by an injunction. Effect of unauthorized use or dealing

29.—(1) A lien claimant may assign the lien claimant's right to a lien by an instrument in writing. Assignment of lien

Idem

(2) An assignment of a possessory lien under Part I becomes effective when the lien claimant delivers possession of the article to the assignee.

Idem

(3) An assignment of a non-possessory lien under Part II is enforceable against third parties only if a change statement recording the assignment has been registered under subsection 10 (5) or a claim for lien has been registered under clause 10 (6) (b).

Destruction
of books,
records, etc.

30.—(1) The registrar may authorize the destruction of books, documents, records or paper that have been micro-filmed or that in the registrar's opinion need not be preserved any longer.

Removal of
information
from
registration
system

(2) The registrar may remove from the central file of the registration system information related to a claim for lien or a change statement,

- (a) if the claim for lien is no longer effective;
- (b) upon the receipt of a change statement discharging the registration of a claim for lien;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a claim for lien or a change statement.

Idem

(3) The registrar, upon notice to the lien claimant, may remove from the central file of the registration system information related to a change statement if,

- (a) it does not set out the correct file number of the claim for lien or change statement to which it relates; or
- (b) it does not set out the name of the person against whom the lien is claimed as that name is set out in the claim for lien or change statement to which it relates.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) requiring the payment of fees and prescribing the amounts thereof;
- (b) prescribing forms, the information to be contained in forms, the manner of recording the information,

including the manner of setting out names, and the persons who shall sign forms;

- (c) requiring that claim for lien forms and change statements forms to be registered under Part II shall be those provided or approved by the registrar;
- (d) governing the time assigned to the registration of claims for lien and change statements;
- (e) prescribing abbreviations, expansions or symbols that may be used in a claim for lien or change statement or in the recording or production of information by the registrar.

PART VI

MISCELLANEOUS

32.—(1) Where under any Act, a person has or is entitled to a lien that may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or in the manner provided by the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, the person shall be deemed to be a lien claimant having a possessory lien under Part I (Possessory Liens) of this Act and the lien may be enforced under Part III (Redemption, Sale or Other Disposition) of this Act. Transition

(2) A lien that arose before the coming into force of this section and that could have been enforced under section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or under the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, or under the *Unclaimed Articles Act*, being chapter 513 of the said Revised Statutes, may continue to be enforced as if those Acts had not been repealed or the person claiming the lien may enforce the lien under Part III of this Act as if the lien were a possessory lien under Part I. Idem

33. Subsection 2 (8) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is amended by striking out "section 52 of the *Mechanics' Lien Act*" in the third line and inserting in lieu thereof "the *Repair and Storage Liens Act*, 1988".

34.—(1) Subsection 147 (13) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section

33, is further amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth and ninth lines and inserting in lieu thereof “the *Repair and Storage Liens Act, 1988*”.

(2) Subsection 190 (5) of the said Act is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the fourth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1988*”.

35. Subsection 23 (3) of the *Niagara Parks Act*, being chapter 317 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 38, section 3, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1988*”.

36. The following are repealed:

1. The *Mechanics’ Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980.
2. The *Unclaimed Articles Act*, being chapter 513 of the Revised Statutes of Ontario, 1980.
3. The *Warehousemen’s Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980.

Commence-
ment

37. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

38. The short title of this Act is the *Repair and Storage Liens Act, 1988*.

Bill 152

An Act to revise and consolidate the Law related to Repairers' and Storers' Liens

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading June 8th, 1988

2nd Reading March 1st, 1989

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The principal purpose of the Bill is to clarify the right of repairers and storers to claim a lien for articles that they have repaired, stored or repaired and stored.

Traditional possessory lien rights are preserved and codified (Part I). New non-possessory lien rights are established whereby a repairer or storer will be able to return an article to the person who has the right to claim the article without loss of lien rights (Part II).

Among the features of the Bill are the following:

1. The Act binds the Crown (section 2).
2. A non-possessory lien will be enforceable against third parties only if a claim for lien is registered under the registration system established under the *Personal Property Security Act* (subsections 9 (1) and 10 (1)).
3. Priority disputes between lien claimants and other persons with interests in articles will be governed by rules set out in the Act (section 6, subsections 7 (3), 10 (1) and 16 (1)).
4. Procedures are established for the sale or retention of an article by a lien claimant and for redemption of the article by the owner or other persons with an interest in the article (sections 15, 17 and 22).
5. A lien claimant will be permitted to donate an article to a registered charity where the repair or storage charges have remained unpaid for twelve months and they exceed the value of the article (section 19).
6. A procedure is established for persons to recover possession of their articles when there is a dispute as to the price of the repair or storage services (section 24).
7. The *Mechanics' Lien Act*, the *Unclaimed Articles Act* and the *Warehousemen's Lien Act* will be repealed on proclamation by the Lieutenant Governor (section 37).

Bill 152

1988

An Act to revise and consolidate the Law related to Repairers' and Storers' Liens

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“article” means an item of tangible personal property other than a fixture;


“lien claimant” means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

1989, c. 16

“motor vehicle” means a motor vehicle as defined in the regulations made under the *Personal Property Security Act, 1989*;

“prescribed” means prescribed by a regulation made under this Act;

“registrar” and “branch registrar” mean, respectively, the registrar and a branch registrar under the *Personal Property Security Act, 1989*;

“repair” means an expenditure of money on, or the application of labour, skill or materials to, an article for the purpose of altering, improving or restoring its properties or maintaining its condition and includes, 

(a) the transportation of the article for purpose of making a repair,

(b) the towing of an article,

(c) the salvage of an article;

“repairer” means a person who makes a repair on the understanding that the person will be paid for the repair;

“storer” means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

Repair, etc.,
by third
party

(2) The following rules apply where an article is left for repair, storage or storage and repair and the article is forwarded by the person with whom the article is left to some other person for the repair, storage or storage and repair:

1. The person with whom the article was left shall be deemed to have performed the services and to be entitled to the rights of a repairer or storer against the person who left the article unless,

- i. there is a written agreement between the person who left the article and the person with whom it was left that there is no lien, or
 - ii. the person with whom the article was left has agreed to act as agent for the person who left the article in forwarding it to an identified repairer or storer for the repair, storage or storage and repair.
2. Unless subparagraph ii of paragraph 1 applies, the person to whom the article was forwarded does not have a lien under this Act.

2. This Act binds the Crown.

Act binds
Crown

PART I

POSSESSORY LIENS

3.—(1) In the absence of a written agreement to the contrary, a repairer has a lien against an article that the repairer has repaired for an amount equal to, Repairer's
lien

- (a) the amount that the person who requested the repair agreed to pay;
- (b) where no such amount has been agreed upon, the fair value of the repair; or
- (c) where only part of a repair is completed, the fair value of the part completed,

and the repairer may retain possession of the article until the amount is paid.

(2) A repairer's lien arises and takes effect when the repair is commenced. When lien
arises

(3) A repairer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period following the day, Disposition

- (a) on which the amount required to pay for the repair comes due; or
- (b) on which the repair is completed, if no date is stated for when the amount required to pay for the repair comes due.

Deemed
possession

(4) For the purposes of this Act, a repairer who commences the repair of an article that is not in the repairer's actual possession shall be deemed to have gained possession of the article when the repair is commenced and shall be deemed to have given up possession when the repair is completed or abandoned.

Idem

(5) A repairer who, under subsection (4), is deemed to have possession of an article may remove the article from the premises on which the repair is made.

Storer's lien

4.—(1) Subject to subsection (2), a storer has a lien against an article that the storer has stored or stored and repaired for an amount equal to,

- (a) the amount agreed upon for the storage or storage and repair of the article;
- (b) where no such amount has been agreed upon, the fair value of the storage or storage and repair, including all lawful claims for money advanced, interest on money advanced, insurance, transportation, labour, weighing, packing and other expenses incurred in relation to the storage or storage and repair of the article,

and the storer may retain possession of the article until the amount is paid.

Limit on
storer's lien

(2) A storer is not entitled to a lien for a repair made to an article unless the repair is made by the storer on the understanding that the storer would be paid for the repair or unless subsection 28 (2) applies.

When lien
arises

(3) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair.

Notice to
owner, etc.,
in certain
cases

(4) Where the storer knows or has reason to believe that possession of an article subject to a lien was received from a person other than,

- (a) its owner; or
- (b) a person having its owner's authority,

the storer, within sixty days after the day of receiving the article, shall give written notice of the lien,

- (c) to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registration under the *Personal Property Security Act, 1989* against the name of the person whom the storer knows or has reason to believe is the owner; and

1989, c. 16

- (d) in addition to the notices required by clause (c) where the article is a vehicle,

- (i) to every person who has a registered claim for lien against the article under Part II of this Act,

- (ii) to every person who has a security interest in the vehicle that is perfected by registration under the *Personal Property Security Act, 1989* against the vehicle identification number of the vehicle, and

- (iii) if the vehicle is registered under the *Highway Traffic Act*, to the registered owner.

R.S.O. 1980,
c. 198

- (5) A notice under subsection (4) shall contain,

Contents of
notice

- (a) a description of the article sufficient to enable it to be identified;
 - (b) the address of the place of storage, the date that it was received and the name of the person from whom it was received;
 - (c) a statement that a lien is claimed under this Act by the storer in respect of the article; and
 - (d) a statement advising how the article may be redeemed.

(6) Where a storer fails to give the notice required by subsection (4), the storer's lien as against the person who should have been given the notice is limited to the unpaid amount owing in respect of the period of sixty days from the date when the article was received, and the storer shall surrender possession of the article to that person where the person proves a right to possession and pays that amount.

Effect of
failure to
give notice

(7) The storer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period

Disposition

following the day on which the amount required to pay for the storage or storage and repair becomes due.

Loss of lien

5. A lien under this Part is discharged and cannot be revived as an interest in the article if possession of the article that is subject to the lien is surrendered to, or lawfully comes into the possession of, the owner or any other person who is entitled to receive a notice under subsection 15 (2).

Priority of lien

6. A lien under this Part has priority over the interests of all other persons in the article.

PART II

NON-POSSESSORY LIENS

Non-possessory lien

7.—(1) A lien claimant who is entitled to a lien under Part I (Possessory Liens) against an article, and who gives up possession of the article without having been paid the full amount of the lien to which the lien claimant is entitled under Part I, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed under Part I that remains unpaid.

When lien arises

(2) A non-possessory lien arises and takes effect when the lien claimant gives up possession of the article.

Priority

(3) A non-possessory lien has priority over the interest in the article of any other person other than a lien claimant who is claiming a lien under Part I, and, where more than one non-possessory lien is claimed in the same article, priority shall be determined according to the same rules of priority as govern the distribution of proceeds under section 16.

Period of credit not to affect lien

(4) A non-possessory lien is not extinguished by reason only that the lien claimant has allowed a period of credit for the payment of the debt to which the lien relates.

Acknowledgment of indebtedness required

(5) A non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be on an invoice or other statement of account.

Idem

(6) An acknowledgment of indebtedness under subsection (5) is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount that the lien claimant is owed.

Transactions in ordinary course of business

8.—(1) A buyer of an article from a seller who sells it in the ordinary course of business takes it free of any non-

possessory lien of a lien claimant whose lien arose from its repair or storage at the request of the seller or the seller's agent, unless the buyer signs an acknowledgment referred to in subsection 7 (5).

(2) Notwithstanding that a buyer has signed an acknowledgment as provided in subsection (1), a purchaser purchasing the article in the ordinary course of the buyer's business takes it free of the lien claimant's lien. Idem

9.—(1) A claim for lien or change statement to be registered under this Part shall be in the prescribed form and may be tendered for registration at a branch office established under Part IV of the *Personal Property Security Act, 1989*, or by mail addressed to an address prescribed under that Act. Registration of documents
1989, c. 16

(2) A claim for lien or change statement is not invalidated nor is its effect impaired by reason only of error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission. Errors in documents

10.—(1) A non-possessory lien is enforceable against third parties only if a claim for lien has been registered, and, where a person acquires a right against an article after a non-possessory lien arises, the right of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the right. Claim for lien

(2) A claim for lien may relate to more than one article and may be registered at any time after an acknowledgment of indebtedness has been signed. Idem

(3) A claim for lien is effective from the time assigned to its registration by the registrar or branch registrar and expires at, and cannot be renewed after, the end of the earlier of, Idem

(a) the end of the registration period as set out in the claim for lien or as extended by the most recent change statement registered under subsection (4) or reduced by a change statement registered under subsection (7); and ▲

(b) the third anniversary of the registration of the claim for lien.

(4) The registration period set out in a claim for lien or change statement may be extended by filing a change statement before the end of the registration period. Idem

Assignment

↓
(5) A change statement may be registered to record an assignment of a non-possessory lien where a claim for lien has been registered. ↑

Idem

(6) Where a claim for lien has not been registered and the lien claimant has assigned the non-possessory lien before the registration of the claim for lien, a claim for lien may be registered,

- (a) naming the assignor as the lien claimant and subsection (5) applies; or
- (b) naming the assignee as the lien claimant and subsection (5) does not apply.

Changes in information

↓
(7) Unless the information related to a claim for lien has been removed from the central file of the registration system, a change statement may be registered at any time during the registration period,

- (a) to correct an error or omission in a claim for lien or any change statement related thereto; or
- (b) to amend a claim for lien or any change statement related thereto where the amendment is not otherwise provided for in this Part. ↑

Change statements

11. The registration of a change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registration of the claim for lien to which it relates is effective.

Discharge

12.—(1) A non-possessory lien is discharged and cannot be revived as an interest in the article,

- (a) upon payment to the lien claimant of the amount of the lien claimed;
- (b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;
- (c) upon the order of a court;
- (d) upon the registration of a change statement recording the discharge;
- (e) upon the expiry of the registration period of the claim for lien; and

- (f) if the article is a motor vehicle, upon a change of ownership of the vehicle if a claim for lien was not registered before the change of ownership occurred.

(2) Where a claim for lien relates to more than one article and it is agreed to release one or more, but not all, of the articles from the lien, a change statement recording the release may be registered. Partial discharge

(3) Where a release described in subsection (2) is given, any person may, by written request, require the lien claimant to deliver to the person making the request a change statement recording the release. Idem

(4) Within thirty days after a registered claim for lien is discharged under clause (1) (a), (b), (c) or (f) or within thirty days of a request being made under subsection (3), the lien claimant shall register a change statement recording the discharge or partial discharge. Time limit

(5) Where a lien claimant fails to comply with subsection (4), the claimant, on written notice from the owner or other person with an interest in the article, shall pay the owner or other person \$100 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction. Penalty

13. Upon application to the District Court, the court may order the registrar to amend the information recorded in the central file of the registration system to indicate that the registration of a claim for lien has been discharged or has been partially discharged, upon any grounds and subject to any conditions that the court considers appropriate in the circumstances. Correction of registrar's records

14.—(1) A lien claimant who has a non-possessory lien and who has registered a claim for lien may deliver at any time to the sheriff of the county or district in which the article is located a copy of the registered claim for lien and a direction to seize the article. Seizure of article

(2) Upon receipt of a copy of a registered claim for lien and a direction to seize an article under subsection (1), the sheriff shall seize the article described in the direction wherever it may be found and shall deliver it to the lien claimant who issued the direction. Idem

(3) Nothing in subsection (1) or (2) prevents a lien claimant from exercising any lawful power of seizure with respect to Other powers of seizure not affected

the article whether provided for by contract or otherwise available to the lien claimant by law.

Limitation

(4) An article shall not be seized if it is in the possession of a lien claimant who claims to be entitled to a lien against it under Part I (Possessory Liens).

Disposition

(5) A lien claimant who has a non-possessory lien against an article has a right to sell the article in accordance with Part III (Redemption, Sale or Other Disposition) if,

- (a) the article has been seized and is in the possession of the lien claimant;
- (b) at least sixty days have expired since the day when the non-possessory lien arose; and
- (c) any part of the amount to which the lien relates is due but unpaid.

Liability for damages

(6) The lien claimant is liable to any person who suffers damages as a result of a seizure under subsection (1) if the lien claimant has entered into an agreement for payment of the debt to which the claim for lien relates and there has been no default under the agreement.

PART III

REDEMPTION, SALE OR OTHER DISPOSITION

Sale of article

15.—(1) A lien claimant who has a right, under this Act, to sell an article shall not exercise that right unless the lien claimant has given notice of intention to sell the article.

Idem

(2) A notice of intention to sell an article shall be in writing and shall be given at least fifteen days before the sale to,

- (a) the person from whom the article was received for repair, storage or storage and repair;
- (b) where the article was received for repair, storage or storage and repair from a person other than the owner,
 - (i) the person who is the registered owner of the article, if the article is a motor vehicle, or
 - (ii) the person the lien claimant knows or has reason to believe is the owner, if the article is not a motor vehicle;

- (c) every person who has a security interest in the article under the *Personal Property Security Act, 1989* 1989, c. 16 that is perfected by registration against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle; and

- (d) every person who has registered a claim for lien under Part II (Non-possessory Liens) against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle.

- (3) The notice required by subsection (2) shall contain,

Contents of
notice

- (a) a description of the article sufficient to enable it to be identified;

- (b) a statement of the amount required to satisfy the lien, as of the time when the notice is given, and any costs of seizure;

- (c) a statement of the method of calculating, on a daily basis, any further costs for storage or preservation of the article that may be incurred between the time when the notice is given and the time when the sale is to take place;

- (d) a statement that the article may be redeemed by any person entitled to receive notice by payment of the amount determined under clauses (b) and (c) plus any other reasonable costs incurred in preparing the article for sale;

- (e) a statement of,

(i) the name of the person to whom payment may be made,

(ii) the address where the article may be redeemed,

(iii) the times during which redemption may be made,

(iv) the telephone number, if any, of the person giving notice;

(f) a statement of the date, time and place of any public sale at which the article is to be sold, or the date after which any private sale of the article is to be made; and

(g) a statement that the article may be sold unless it is redeemed on or before the day required to be specified in the notice by clause (f).

Method of
sale

(4) The article may be sold in whole or in part, by public or private sale, at any time and place, on any terms, so long as every aspect of the sale is commercially reasonable.

Purchase by
lien claimant

(5) The lien claimant may purchase the article only at a public sale.

Proceeds of
sale

16.—(1) Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,

(a) to the reasonable expenses of selling the article;

(b) to the costs of seizure;

(c) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of the lien claimant making the sale;

(d) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;

(e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before

or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;

- (f) to the payment of every person who has a perfected security interest in the article under the *Personal Property Security Act, 1989* who was entitled to notice under subsection 15 (2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and
- (g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.

1989, c. 16

(2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23.

Payment into court

17.—(1) A lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15 (2).

Retention of article

(2) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the proposal within thirty days of the receipt of the proposal, the lien claimant, subject to subsections (3) and (4), shall sell the article in accordance with section 15.

Objection

(3) Upon application to the District Court and upon notice to every person who has given a written objection to the proposal, the court may order that the objection is ineffective because,

Application to District Court

- (a) the objection was made for a purpose other than the protection of the interest in the article of the person who made the objection; or
- (b) the fair market value of the article is less than the amount of the lien of the lien claimant and the estimated expenses to which the lien claimant is entitled under this Act.

Foreclosure

(4) If no effective objection is made, the lien claimant, at the expiration of the thirty-day period mentioned in subsection (2), shall be deemed to have irrevocably elected to retain the article and thereafter is entitled to hold or dispose of the article free from the rights and interests of every person to whom the written notice of the proposal was given.

Effect of
sale or
foreclosure;
amount of
lien deemed
satisfied

18. Where a lien claimant,

- (a) sells an article under section 15; or
- (b) is deemed to have elected irrevocably to retain the article under subsection 17 (4),

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

Gift to
charity

19.—(1) A lien claimant who has retained possession of an article for twelve months after the right to sell the article arose may give the article to a charity registered under the *Income Tax Act* (Canada) if,

R.S.C. 1952,
c. 148

- (a) the article has a fair market value of less than the total of the amount of the lien claimed by the lien claimant and the amount of the estimated expenses to which the lien claimant is entitled under this Act; and
- (b) the lien claimant has not given a notice of intention to sell under section 15 or a notice of a proposal to retain the article under section 17.

Records to
be
maintained

(2) A lien claimant who disposes of an article under this section shall maintain for six years a record of the article disposed of and the charity to which it was given.

Effect of
disposition
on title of
article

20.—(1) Although a lien claimant has failed to comply with this Part, a purchaser who buys an article in good faith,

- (a) in a sale under section 15; or
- (b) from a lien claimant who has retained an article under section 17,

acquires the article free of the interest of the owner and any person entitled to notice under this Part.

(2) A charity that is given an article by a lien claimant under section 19, acquires the article free of the interest of the owner and all other persons. Idem

21. A lien claimant who fails to comply with the requirements of this Part is liable to any person who suffers damages as a result and shall pay the person an amount equal to the greater of \$200 or the actual damages. Liability of
lien claimant
for non-
compliance

22. At any time before the lien claimant, Redemption
of article

- (a) has sold the article under section 15 or contracted for such sale;
- (b) is deemed to have irrevocably elected to retain the article under section 17; or
- (c) has given the article to a charity under section 19,

the owner and any person referred to in subsection 15 (2) may redeem the article by paying the amount required to satisfy the lien.

PART IV

DISPUTE RESOLUTION

23.—(1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to, Determi-
nation of
rights by
court

- (a) the seizure of an article under Part II (Non-possessory Liens) or any right of seizure in respect of an article;
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,

and the court may make such order as it considers necessary to give effect to those rights.

Limitation

(2) An application shall not be made under clause (1) (d) where an application has been made under section 24.

Possessory
liens; return
of article

24.—(1) Where a lien is claimed under Part I (Possessory Liens) and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, and there is,

- (a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair;
- (b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article; or
- (c) a dispute concerning the right of the lien claimant to retain possession of the article,

the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

Respondent

(2) The lien claimant shall be named as the respondent in the application.

Form

(3) The application shall be in the prescribed form and may include an offer of settlement.

Payment into
court

(4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.

Initial
certificate

(5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the prescribed form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and

where applicable, indicating the portion of that amount that is offered in settlement of the dispute.

(6) The applicant shall give the initial certificate to the respondent who, within three days of receiving the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the prescribed form.

Release on
interim
certificate

(7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the prescribed form and under the seal of the court.

Final
certificate

(8) The applicant shall give the final certificate to the respondent who, upon receiving the final certificate, shall release immediately the article described therein.

Release on
final
certificate

(9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff or bailiff to seize the article and, upon receipt of the writ, the sheriff or bailiff shall seize the article and return it to the applicant.

Writ of
seizure

⬇
(10) Before obtaining a writ of seizure, the applicant shall file an affidavit with the clerk or registrar of the court confirming that the respondent has not released the article as required. ⬆

Idem

(11) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff or bailiff under a writ of seizure, the respondent may demand a receipt in the prescribed form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the prescribed form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.

Payment out
of court of
settlement

(12) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.

Notice to
applicant

Substitution
of security

(13) Where the article is released to the applicant by the respondent or is seized by the sheriff or bailiff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge upon the amount paid into court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.



Discharge

(14) The charge upon the money paid into court or the security posted with the court is discharged ninety days after the article was returned to the applicant or seized unless, before the end of the ninety days, the respondent has accepted the applicant's offer of settlement or has commenced an action to recover the amount claimed.

Return of
money or
security

(15) Upon the expiry of the ninety days referred to in subsection (14), the clerk or registrar of the court may return to the applicant the money paid into court and deliver up for cancellation any security posted with the court if the applicant files with the clerk or registrar an affidavit confirming that the respondent has neither accepted an offer of settlement nor commenced an action to recover the money claimed.

Costs of
enforcing
writ seizure

(16) The respondent is liable for the costs of enforcing a writ of seizure and these costs shall be set off against the amount paid into court under this section.



Proper court

25. An application under this Part may be brought in any court of appropriate monetary and territorial jurisdiction.

PART V

GENERAL

Separate
liens

26.—(1) A separate lien arises under this Act each time an article is repaired, stored or stored and repaired.

No tacking

(2) A lien under this Act cannot be tacked onto another lien under this Act.

Service of
documents

27.—(1) A document required to be given or that may be given under this Act is sufficiently given if it is given personally to the intended recipient or if it is sent by certified or registered mail or prepaid courier to the intended recipient at,

- (a) the intended recipient's address for service if there is one;

- (b) the last known mailing address of the intended recipient according to the records of the person sending the document, where there is no address for service; or
- (c) the most recent address of the intended recipient as shown on a claim for lien or change statement registered under this Act or as shown on financing statement or financing change statement registered under the *Personal Property Security Act, 1989*.

1989, c. 16

(2) A document sent to the intended recipient by certified or registered mail shall be deemed to have been given on the earlier of,

Service by
mail

- (a) the day the intended recipient actually receives it; or
- (b) the tenth day after the day of mailing.

28.—(1) Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

Lien
claimant's
rights and
obligations

- (a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and
- (b) unless otherwise agreed,
 - (i) shall keep the article identifiable, and
 - (ii) may create a security interest under the *Personal Property Security Act, 1989* in the article, but only upon terms that do not impair a right of redemption under that Act or this Act.

(2) Unless otherwise agreed, a lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of an article that is subject to a lien, including the cost of insurance and the payment of taxes or other charges incurred therefor, and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien.

Reasonable
expenses

(3) Except as provided in clause 4 (1) (b), a lien claimant is not entitled to a lien for interest on the amount owing with respect to an article but this subsection does not affect any

Interest

right that the lien claimant may otherwise have to recover such interest.

Effect of
failure to
meet
obligation

(4) A lien claimant is liable for any loss or damage caused by a failure to meet any obligation imposed by this section but does not lose the lien against the article by reason only of that failure.

Use of article

(5) A lien claimant may use an article,

- (a) for the purpose of preserving the article or its value;
- (b) for the purpose of making a reasonable demonstration of the quality or properties of the article in order to facilitate the making of a sale under this Act;
- (c) in accordance with an order of any court before which an application is being heard or an action is being tried in respect of that article; or
- (d) in accordance with any agreement with the owner.

Effect of
unauthorized
use or
dealing

(6) Where the lien claimant uses or deals with an article in a manner not authorized by this Act, the lien claimant is liable for any loss or damage caused by that use or dealing and may be restrained by an injunction.

Assignment
of lien

29.—(1) A lien claimant may assign the lien claimant's right to a lien by an instrument in writing.

Idem

(2) An assignment of a possessory lien under Part I becomes effective when the lien claimant delivers possession of the article to the assignee.

Idem

(3) An assignment of a non-possessory lien under Part II is enforceable against third parties only if a change statement recording the assignment has been registered under subsection 10 (5) or a claim for lien has been registered under clause 10 (6) (b).

Destruction
of books,
records, etc.

30.—(1) The registrar may authorize the destruction of books, documents, records or paper that have been micro-filmed or that in the registrar's opinion need not be preserved any longer.

Removal of
information
from
registration
system

(2) The registrar may remove from the central file of the registration system information related to a claim for lien or a change statement,

- (a) if the claim for lien is no longer effective;
- (b) upon the receipt of a change statement discharging the registration of a claim for lien;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a claim for lien or a change statement.

(3) The registrar, upon notice to the lien claimant, may remove from the central file of the registration system information related to a change statement if, Idem

- (a) it does not set out the correct file number of the claim for lien or change statement to which it relates; or
- (b) it does not set out the name of the person against whom the lien is claimed as that name is set out in the claim for lien or change statement to which it relates.



31.—(1) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, may use reasonable force to enter land and premises if the sheriff or bailiff believes, on reasonable and probable grounds, that the article to be seized is there and reasonable force may be used to execute the direction or writ.

Power of
sheriffs and
bailiffs

(2) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, in respect of an article in a dwelling shall not use force to enter the dwelling or to execute the direction or writ except under the authority of,

Restriction

- (a) the order of a court of competent jurisdiction, in the case of a direction to seize an article;
- (b) the order of the court that issued the writ, in the case of a writ of seizure.

(3) A court may make an order for the purposes of subsection (2) if, in the opinion of the court, there is reasonable and probable grounds to believe that the article to be seized is in the dwelling.

Court orders



32. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) requiring the payment of fees and prescribing the amounts thereof;
- (b) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (c) requiring that claim for lien forms and change statements forms to be registered under Part II shall be those provided or approved by the registrar;
- (d) governing the time assigned to the registration of claims for lien and change statements;
- (e) prescribing abbreviations, expansions or symbols that may be used in a claim for lien or change statement or in the recording or production of information by the registrar;
- (f) prescribing the types of security that may be deposited with a court under section 24.

PART VI

MISCELLANEOUS

Transition

33.—(1) Where under any Act, a person has or is entitled to a lien that may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or in the manner provided by the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, the person shall be deemed to be a lien claimant having a possessory lien under Part I (Possessory Liens) of this Act and the lien may be enforced under Part III (Redemption, Sale or Other Disposition) of this Act.

Idem

(2) A lien that arose before the coming into force of this section and that could have been enforced under section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or under the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, or under the *Unclaimed Articles Act*, being chapter 513 of the said Revised Statutes, may continue to be enforced as if those Acts had not been repealed or the person claiming the lien may enforce the lien under Part III of this Act as if the lien were a possessory lien under Part I.

34. Subsection 2 (8) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the third line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

35.—(1) Subsection 147 (13) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section 33, is further amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth and ninth lines and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

(2) Subsection 190 (5) of the said Act is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the fourth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

36. Subsection 23 (3) of the *Niagara Parks Act*, being chapter 317 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 38, section 3, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

37. The following are repealed:

Repeals

1. The *Mechanics’ Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980.
2. The *Unclaimed Articles Act*, being chapter 513 of the Revised Statutes of Ontario, 1980.
3. The *Warehousemen’s Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980.

38. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

39. The short title of this Act is the *Repair and Storage Liens Act, 1989*.

Short title

Bill 152

*(Chapter 17
Statutes of Ontario, 1989)*

An Act to revise and consolidate the Law related to Repairers' and Storers' Liens

The Hon. W. Wrye
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	June 8th, 1988
<i>2nd Reading</i>	March 1st, 1989
<i>3rd Reading</i>	March 2nd, 1989
<i>Royal Assent</i>	March 2nd, 1989

Bill 152

1988

**An Act to revise and consolidate the
Law related to Repairers' and Storers' Liens**

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

Definitions

1.—(1) In this Act,

“article” means an item of tangible personal property other than a fixture;

“lien claimant” means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

1989, c. 16

“motor vehicle” means a motor vehicle as defined in the regulations made under the *Personal Property Security Act, 1989*;

“prescribed” means prescribed by a regulation made under this Act;

“registrar” and “branch registrar” mean, respectively, the registrar and a branch registrar under the *Personal Property Security Act, 1989*;

“repair” means an expenditure of money on, or the application of labour, skill or materials to, an article for the purpose of altering, improving or restoring its properties or maintaining its condition and includes,

- (a) the transportation of the article for purpose of making a repair,
- (b) the towing of an article,
- (c) the salvage of an article;

“repairer” means a person who makes a repair on the understanding that the person will be paid for the repair;

“storer” means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

Repair, etc.,
by third
party

(2) The following rules apply where an article is left for repair, storage or storage and repair and the article is forwarded by the person with whom the article is left to some other person for the repair, storage or storage and repair:

1. The person with whom the article was left shall be deemed to have performed the services and to be entitled to the rights of a repairer or storer against the person who left the article unless,

- i. there is a written agreement between the person who left the article and the person with whom it was left that there is no lien, or
 - ii. the person with whom the article was left has agreed to act as agent for the person who left the article in forwarding it to an identified repairer or storer for the repair, storage or storage and repair.
2. Unless subparagraph ii of paragraph 1 applies, the person to whom the article was forwarded does not have a lien under this Act.

2. This Act binds the Crown.

Act binds
Crown

PART I

POSSESSORY LIENS

3.—(1) In the absence of a written agreement to the contrary, a repairer has a lien against an article that the repairer has repaired for an amount equal to,

Repairer's
lien

- (a) the amount that the person who requested the repair agreed to pay;
- (b) where no such amount has been agreed upon, the fair value of the repair; or
- (c) where only part of a repair is completed, the fair value of the part completed,

and the repairer may retain possession of the article until the amount is paid.

(2) A repairer's lien arises and takes effect when the repair is commenced.

When lien
arises

(3) A repairer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period following the day,

Disposition

- (a) on which the amount required to pay for the repair comes due; or
- (b) on which the repair is completed, if no date is stated for when the amount required to pay for the repair comes due.

Deemed
possession

(4) For the purposes of this Act, a repairer who commences the repair of an article that is not in the repairer's actual possession shall be deemed to have gained possession of the article when the repair is commenced and shall be deemed to have given up possession when the repair is completed or abandoned.

Idem

(5) A repairer who, under subsection (4), is deemed to have possession of an article may remove the article from the premises on which the repair is made.

Storer's lien

4.—(1) Subject to subsection (2), a storer has a lien against an article that the storer has stored or stored and repaired for an amount equal to,

- (a) the amount agreed upon for the storage or storage and repair of the article;
- (b) where no such amount has been agreed upon, the fair value of the storage or storage and repair, including all lawful claims for money advanced, interest on money advanced, insurance, transportation, labour, weighing, packing and other expenses incurred in relation to the storage or storage and repair of the article,

and the storer may retain possession of the article until the amount is paid.

Limit on
storer's lien

(2) A storer is not entitled to a lien for a repair made to an article unless the repair is made by the storer on the understanding that the storer would be paid for the repair or unless subsection 28 (2) applies.

When lien
arises

(3) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair.

Notice to
owner, etc.,
in certain
cases

(4) Where the storer knows or has reason to believe that possession of an article subject to a lien was received from a person other than,

- (a) its owner; or
- (b) a person having its owner's authority,

the storer, within sixty days after the day of receiving the article, shall give written notice of the lien,

(c) to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registration under the *Personal Property Security Act, 1989* against the name of the person whom the storer knows or has reason to believe is the owner; and

1989, c. 16

(d) in addition to the notices required by clause (c) where the article is a vehicle,

(i) to every person who has a registered claim for lien against the article under Part II of this Act,

(ii) to every person who has a security interest in the vehicle that is perfected by registration under the *Personal Property Security Act, 1989* against the vehicle identification number of the vehicle, and

(iii) if the vehicle is registered under the *Highway Traffic Act*, to the registered owner.

R.S.O. 1980,
c. 198

(5) A notice under subsection (4) shall contain,

Contents of
notice

(a) a description of the article sufficient to enable it to be identified;

(b) the address of the place of storage, the date that it was received and the name of the person from whom it was received;

(c) a statement that a lien is claimed under this Act by the storer in respect of the article; and

(d) a statement advising how the article may be redeemed.

(6) Where a storer fails to give the notice required by subsection (4), the storer's lien as against the person who should have been given the notice is limited to the unpaid amount owing in respect of the period of sixty days from the date when the article was received, and the storer shall surrender possession of the article to that person where the person proves a right to possession and pays that amount.

Effect of
failure to
give notice

(7) The storer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period

Disposition

following the day on which the amount required to pay for the storage or storage and repair becomes due.

Loss of lien

5. A lien under this Part is discharged and cannot be revived as an interest in the article if possession of the article that is subject to the lien is surrendered to, or lawfully comes into the possession of, the owner or any other person who is entitled to receive a notice under subsection 15 (2).

Priority of lien

6. A lien under this Part has priority over the interests of all other persons in the article.

PART II

NON-POSSESSORY LIENS

Non-possessory lien

7.—(1) A lien claimant who is entitled to a lien under Part I (Possessory Liens) against an article, and who gives up possession of the article without having been paid the full amount of the lien to which the lien claimant is entitled under Part I, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed under Part I that remains unpaid.

When lien arises

(2) A non-possessory lien arises and takes effect when the lien claimant gives up possession of the article.

Priority

(3) A non-possessory lien has priority over the interest in the article of any other person other than a lien claimant who is claiming a lien under Part I, and, where more than one non-possessory lien is claimed in the same article, priority shall be determined according to the same rules of priority as govern the distribution of proceeds under section 16.

Period of credit not to affect lien

(4) A non-possessory lien is not extinguished by reason only that the lien claimant has allowed a period of credit for the payment of the debt to which the lien relates.

Acknowledgment of indebtedness required

(5) A non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be on an invoice or other statement of account.

Idem

(6) An acknowledgment of indebtedness under subsection (5) is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount that the lien claimant is owed.

Transactions in ordinary course of business

8.—(1) A buyer of an article from a seller who sells it in the ordinary course of business takes it free of any non-

possessory lien of a lien claimant whose lien arose from its repair or storage at the request of the seller or the seller's agent, unless the buyer signs an acknowledgment referred to in subsection 7 (5).

(2) Notwithstanding that a buyer has signed an acknowledgment as provided in subsection (1), a purchaser purchasing the article in the ordinary course of the buyer's business takes it free of the lien claimant's lien. Idem

9.—(1) A claim for lien or change statement to be registered under this Part shall be in the prescribed form and may be tendered for registration at a branch office established under Part IV of the *Personal Property Security Act, 1989*, or by mail addressed to an address prescribed under that Act. Registration of documents
1989, c. 16

(2) A claim for lien or change statement is not invalidated nor is its effect impaired by reason only of error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission. Errors in documents

10.—(1) A non-possessory lien is enforceable against third parties only if a claim for lien has been registered, and, where a person acquires a right against an article after a non-possessory lien arises, the right of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the right. Claim for lien

(2) A claim for lien may relate to more than one article and may be registered at any time after an acknowledgment of indebtedness has been signed. Idem

(3) A claim for lien is effective from the time assigned to its registration by the registrar or branch registrar and expires at, and cannot be renewed after, the end of the earlier of, Idem

(a) the end of the registration period as set out in the claim for lien or as extended by the most recent change statement registered under subsection (4) or reduced by a change statement registered under subsection (7); and

(b) the third anniversary of the registration of the claim for lien.

(4) The registration period set out in a claim for lien or change statement may be extended by filing a change statement before the end of the registration period. Idem

Assignment (5) A change statement may be registered to record an assignment of a non-possessory lien where a claim for lien has been registered.

Idem (6) Where a claim for lien has not been registered and the lien claimant has assigned the non-possessory lien before the registration of the claim for lien, a claim for lien may be registered,

- (a) naming the assignor as the lien claimant and subsection (5) applies; or
- (b) naming the assignee as the lien claimant and subsection (5) does not apply.

Changes in information (7) Unless the information related to a claim for lien has been removed from the central file of the registration system, a change statement may be registered at any time during the registration period,

- (a) to correct an error or omission in a claim for lien or any change statement related thereto; or
- (b) to amend a claim for lien or any change statement related thereto where the amendment is not otherwise provided for in this Part.

Change statements **11.** The registration of a change statement is effective from the time assigned to its registration by the registrar or branch registrar and is effective so long as the registration of the claim for lien to which it relates is effective.

Discharge **12.—(1)** A non-possessory lien is discharged and cannot be revived as an interest in the article,

- (a) upon payment to the lien claimant of the amount of the lien claimed;
- (b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;
- (c) upon the order of a court;
- (d) upon the registration of a change statement recording the discharge;
- (e) upon the expiry of the registration period of the claim for lien; and

- (f) if the article is a motor vehicle, upon a change of ownership of the vehicle if a claim for lien was not registered before the change of ownership occurred.

(2) Where a claim for lien relates to more than one article and it is agreed to release one or more, but not all, of the articles from the lien, a change statement recording the release may be registered. Partial discharge

(3) Where a release described in subsection (2) is given, any person may, by written request, require the lien claimant to deliver to the person making the request a change statement recording the release. Idem

(4) Within thirty days after a registered claim for lien is discharged under clause (1) (a), (b), (c) or (f) or within thirty days of a request being made under subsection (3), the lien claimant shall register a change statement recording the discharge or partial discharge. Time limit

(5) Where a lien claimant fails to comply with subsection (4), the claimant, on written notice from the owner or other person with an interest in the article, shall pay the owner or other person \$100 and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction. Penalty

13. Upon application to the District Court, the court may order the registrar to amend the information recorded in the central file of the registration system to indicate that the registration of a claim for lien has been discharged or has been partially discharged, upon any grounds and subject to any conditions that the court considers appropriate in the circumstances. Correction of registrar's records

14.—(1) A lien claimant who has a non-possessory lien and who has registered a claim for lien may deliver at any time to the sheriff of the county or district in which the article is located a copy of the registered claim for lien and a direction to seize the article. Seizure of article

(2) Upon receipt of a copy of a registered claim for lien and a direction to seize an article under subsection (1), the sheriff shall seize the article described in the direction wherever it may be found and shall deliver it to the lien claimant who issued the direction. Idem

(3) Nothing in subsection (1) or (2) prevents a lien claimant from exercising any lawful power of seizure with respect to Other powers of seizure not affected

the article whether provided for by contract or otherwise available to the lien claimant by law.

Limitation (4) An article shall not be seized if it is in the possession of a lien claimant who claims to be entitled to a lien against it under Part I (Possessory Liens).

Disposition (5) A lien claimant who has a non-possessory lien against an article has a right to sell the article in accordance with Part III (Redemption, Sale or Other Disposition) if,

- (a) the article has been seized and is in the possession of the lien claimant;
- (b) at least sixty days have expired since the day when the non-possessory lien arose; and
- (c) any part of the amount to which the lien relates is due but unpaid.

Liability for damages (6) The lien claimant is liable to any person who suffers damages as a result of a seizure under subsection (1) if the lien claimant has entered into an agreement for payment of the debt to which the claim for lien relates and there has been no default under the agreement.

PART III

REDEMPTION, SALE OR OTHER DISPOSITION

Sale of article **15.—**(1) A lien claimant who has a right, under this Act, to sell an article shall not exercise that right unless the lien claimant has given notice of intention to sell the article.

Idem (2) A notice of intention to sell an article shall be in writing and shall be given at least fifteen days before the sale to,

- (a) the person from whom the article was received for repair, storage or storage and repair;
- (b) where the article was received for repair, storage or storage and repair from a person other than the owner,
 - (i) the person who is the registered owner of the article, if the article is a motor vehicle, or
 - (ii) the person the lien claimant knows or has reason to believe is the owner, if the article is not a motor vehicle;

- (c) every person who has a security interest in the article under the *Personal Property Security Act, 1989* 1989, c. 16 that is perfected by registration against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle; and

- (d) every person who has registered a claim for lien under Part II (Non-possessory Liens) against,

(i) the name of the owner, if the owner is a person entitled to notice under clause (a) or (b),

(ii) the vehicle identification number, if the article is a motor vehicle.

- (3) The notice required by subsection (2) shall contain,

Contents of
notice

- (a) a description of the article sufficient to enable it to be identified;

- (b) a statement of the amount required to satisfy the lien, as of the time when the notice is given, and any costs of seizure;

- (c) a statement of the method of calculating, on a daily basis, any further costs for storage or preservation of the article that may be incurred between the time when the notice is given and the time when the sale is to take place;

- (d) a statement that the article may be redeemed by any person entitled to receive notice by payment of the amount determined under clauses (b) and (c) plus any other reasonable costs incurred in preparing the article for sale;

- (e) a statement of,

(i) the name of the person to whom payment may be made,

(ii) the address where the article may be redeemed,

(iii) the times during which redemption may be made,

- (iv) the telephone number, if any, of the person giving notice;
- (f) a statement of the date, time and place of any public sale at which the article is to be sold, or the date after which any private sale of the article is to be made; and
- (g) a statement that the article may be sold unless it is redeemed on or before the day required to be specified in the notice by clause (f).

Method of
sale

(4) The article may be sold in whole or in part, by public or private sale, at any time and place, on any terms, so long as every aspect of the sale is commercially reasonable.

Purchase by
lien claimant

(5) The lien claimant may purchase the article only at a public sale.

Proceeds of
sale

16.—(1) Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,

- (a) to the reasonable expenses of selling the article;
- (b) to the costs of seizure;
- (c) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of the lien claimant making the sale;
- (d) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;
- (e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before

or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;

- (f) to the payment of every person who has a perfected security interest in the article under the *Personal Property Security Act, 1989* who was entitled to notice under subsection 15 (2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and
- (g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.

1989, c. 16

(2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23.

Payment into court

17.—(1) A lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15 (2).

Retention of article

(2) Where a person entitled to notice under subsection (1) gives the lien claimant a written objection to the proposal within thirty days of the receipt of the proposal, the lien claimant, subject to subsections (3) and (4), shall sell the article in accordance with section 15.

Objection

(3) Upon application to the District Court and upon notice to every person who has given a written objection to the proposal, the court may order that the objection is ineffective because,

Application to District Court

- (a) the objection was made for a purpose other than the protection of the interest in the article of the person who made the objection; or
- (b) the fair market value of the article is less than the amount of the lien of the lien claimant and the estimated expenses to which the lien claimant is entitled under this Act.

Foreclosure

(4) If no effective objection is made, the lien claimant, at the expiration of the thirty-day period mentioned in subsection (2), shall be deemed to have irrevocably elected to retain the article and thereafter is entitled to hold or dispose of the article free from the rights and interests of every person to whom the written notice of the proposal was given.

Effect of
sale or
foreclosure;
amount of
lien deemed
satisfied

18. Where a lien claimant,

- (a) sells an article under section 15; or
- (b) is deemed to have elected irrevocably to retain the article under subsection 17 (4),

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

Gift to
charity

19.—(1) A lien claimant who has retained possession of an article for twelve months after the right to sell the article arose may give the article to a charity registered under the *Income Tax Act* (Canada) if,

R.S.C. 1952,
c. 148

- (a) the article has a fair market value of less than the total of the amount of the lien claimed by the lien claimant and the amount of the estimated expenses to which the lien claimant is entitled under this Act; and
- (b) the lien claimant has not given a notice of intention to sell under section 15 or a notice of a proposal to retain the article under section 17.

Records to
be
maintained

(2) A lien claimant who disposes of an article under this section shall maintain for six years a record of the article disposed of and the charity to which it was given.

Effect of
disposition
on title of
article

20.—(1) Although a lien claimant has failed to comply with this Part, a purchaser who buys an article in good faith,

- (a) in a sale under section 15; or
- (b) from a lien claimant who has retained an article under section 17,

acquires the article free of the interest of the owner and any person entitled to notice under this Part.

(2) A charity that is given an article by a lien claimant under section 19, acquires the article free of the interest of the owner and all other persons. Idem

21. A lien claimant who fails to comply with the requirements of this Part is liable to any person who suffers damages as a result and shall pay the person an amount equal to the greater of \$200 or the actual damages. Liability of lien claimant for non-compliance

22. At any time before the lien claimant, Redemption of article

- (a) has sold the article under section 15 or contracted for such sale;
- (b) is deemed to have irrevocably elected to retain the article under section 17; or
- (c) has given the article to a charity under section 19,

the owner and any person referred to in subsection 15 (2) may redeem the article by paying the amount required to satisfy the lien.

PART IV

DISPUTE RESOLUTION

23.—(1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to, Determination of rights by court

- (a) the seizure of an article under Part II (Non-possessory Liens) or any right of seizure in respect of an article;
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,

and the court may make such order as it considers necessary to give effect to those rights.

Limitation

(2) An application shall not be made under clause (1) (d) where an application has been made under section 24.

Possessory
liens; return
of article

24.—(1) Where a lien is claimed under Part I (Possessory Liens) and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, and there is,

- (a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair;
- (b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article; or
- (c) a dispute concerning the right of the lien claimant to retain possession of the article,

the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

Respondent

(2) The lien claimant shall be named as the respondent in the application.

Form

(3) The application shall be in the prescribed form and may include an offer of settlement.

Payment into
court

(4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.

Initial
certificate

(5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the prescribed form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and

where applicable, indicating the portion of that amount that is offered in settlement of the dispute.

(6) The applicant shall give the initial certificate to the respondent who, within three days of receiving the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the prescribed form.

Release on
interim
certificate

(7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the prescribed form and under the seal of the court.

Final
certificate

(8) The applicant shall give the final certificate to the respondent who, upon receiving the final certificate, shall release immediately the article described therein.

Release on
final
certificate

(9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff or bailiff to seize the article and, upon receipt of the writ, the sheriff or bailiff shall seize the article and return it to the applicant.

Writ of
seizure

(10) Before obtaining a writ of seizure, the applicant shall file an affidavit with the clerk or registrar of the court confirming that the respondent has not released the article as required.

Idem

(11) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff or bailiff under a writ of seizure, the respondent may demand a receipt in the prescribed form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the prescribed form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.

Payment out
of court of
settlement

(12) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.

Notice to
applicant

Substitution
of security

(13) Where the article is released to the applicant by the respondent or is seized by the sheriff or bailiff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge upon the amount paid into court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.

Discharge

(14) The charge upon the money paid into court or the security posted with the court is discharged ninety days after the article was returned to the applicant or seized unless, before the end of the ninety days, the respondent has accepted the applicant's offer of settlement or has commenced an action to recover the amount claimed.

Return of
money or
security

(15) Upon the expiry of the ninety days referred to in subsection (14), the clerk or registrar of the court may return to the applicant the money paid into court and deliver up for cancellation any security posted with the court if the applicant files with the clerk or registrar an affidavit confirming that the respondent has neither accepted an offer of settlement nor commenced an action to recover the money claimed.

Costs of
enforcing
writ seizure

(16) The respondent is liable for the costs of enforcing a writ of seizure and these costs shall be set off against the amount paid into court under this section.

Proper court

25. An application under this Part may be brought in any court of appropriate monetary and territorial jurisdiction.

PART V

GENERAL

Separate
liens

26.—(1) A separate lien arises under this Act each time an article is repaired, stored or stored and repaired.

No tacking

(2) A lien under this Act cannot be tacked onto another lien under this Act.

Service of
documents

27.—(1) A document required to be given or that may be given under this Act is sufficiently given if it is given personally to the intended recipient or if it is sent by certified or registered mail or prepaid courier to the intended recipient at,

- (a) the intended recipient's address for service if there is one;

- (b) the last known mailing address of the intended recipient according to the records of the person sending the document, where there is no address for service; or
- (c) the most recent address of the intended recipient as shown on a claim for lien or change statement registered under this Act or as shown on financing statement or financing change statement registered under the *Personal Property Security Act, 1989*.

1989, c. 16

(2) A document sent to the intended recipient by certified or registered mail shall be deemed to have been given on the earlier of,

Service by mail

- (a) the day the intended recipient actually receives it; or
- (b) the tenth day after the day of mailing.

28.—(1) Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

Lien claimant's rights and obligations

- (a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and
- (b) unless otherwise agreed,
 - (i) shall keep the article identifiable, and
 - (ii) may create a security interest under the *Personal Property Security Act, 1989* in the article, but only upon terms that do not impair a right of redemption under that Act or this Act.

(2) Unless otherwise agreed, a lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of an article that is subject to a lien, including the cost of insurance and the payment of taxes or other charges incurred therefor, and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien.

Reasonable expenses

(3) Except as provided in clause 4 (1) (b), a lien claimant is not entitled to a lien for interest on the amount owing with respect to an article but this subsection does not affect any

Interest

right that the lien claimant may otherwise have to recover such interest.

Effect of
failure to
meet
obligation

(4) A lien claimant is liable for any loss or damage caused by a failure to meet any obligation imposed by this section but does not lose the lien against the article by reason only of that failure.

Use of article

(5) A lien claimant may use an article,

- (a) for the purpose of preserving the article or its value;
- (b) for the purpose of making a reasonable demonstration of the quality or properties of the article in order to facilitate the making of a sale under this Act;
- (c) in accordance with an order of any court before which an application is being heard or an action is being tried in respect of that article; or
- (d) in accordance with any agreement with the owner.

Effect of
unauthorized
use or
dealing

(6) Where the lien claimant uses or deals with an article in a manner not authorized by this Act, the lien claimant is liable for any loss or damage caused by that use or dealing and may be restrained by an injunction.

Assignment
of lien

29.—(1) A lien claimant may assign the lien claimant's right to a lien by an instrument in writing.

Idem

(2) An assignment of a possessory lien under Part I becomes effective when the lien claimant delivers possession of the article to the assignee.

Idem

(3) An assignment of a non-possessory lien under Part II is enforceable against third parties only if a change statement recording the assignment has been registered under subsection 10 (5) or a claim for lien has been registered under clause 10 (6) (b).

Destruction
of books,
records, etc.

30.—(1) The registrar may authorize the destruction of books, documents, records or paper that have been micro-filmed or that in the registrar's opinion need not be preserved any longer.

Removal of
information
from
registration
system

(2) The registrar may remove from the central file of the registration system information related to a claim for lien or a change statement,

- (a) if the claim for lien is no longer effective;
- (b) upon the receipt of a change statement discharging the registration of a claim for lien;
- (c) upon receipt of a court order requiring the registrar to amend the information recorded in the central file to indicate the discharge of a claim for lien or a change statement.

(3) The registrar, upon notice to the lien claimant, may remove from the central file of the registration system information related to a change statement if, Idem

- (a) it does not set out the correct file number of the claim for lien or change statement to which it relates; or
- (b) it does not set out the name of the person against whom the lien is claimed as that name is set out in the claim for lien or change statement to which it relates.

31.—(1) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, may use reasonable force to enter land and premises if the sheriff or bailiff believes, on reasonable and probable grounds, that the article to be seized is there and reasonable force may be used to execute the direction or writ. Power of sheriffs and bailiffs

(2) A sheriff acting under a direction to seize an article or a writ of seizure, or a bailiff acting under a writ of seizure, in respect of an article in a dwelling shall not use force to enter the dwelling or to execute the direction or writ except under the authority of, Restriction

- (a) the order of a court of competent jurisdiction, in the case of a direction to seize an article;
- (b) the order of the court that issued the writ, in the case of a writ of seizure.

(3) A court may make an order for the purposes of subsection (2) if, in the opinion of the court, there is reasonable and probable grounds to believe that the article to be seized is in the dwelling. Court orders

32. The Lieutenant Governor in Council may make regulations, Regulations

- (a) requiring the payment of fees and prescribing the amounts thereof;
- (b) prescribing forms, the information to be contained in forms, the manner of recording the information, including the manner of setting out names, and the persons who shall sign forms;
- (c) requiring that claim for lien forms and change statements forms to be registered under Part II shall be those provided or approved by the registrar;
- (d) governing the time assigned to the registration of claims for lien and change statements;
- (e) prescribing abbreviations, expansions or symbols that may be used in a claim for lien or change statement or in the recording or production of information by the registrar;
- (f) prescribing the types of security that may be deposited with a court under section 24.

PART VI

MISCELLANEOUS

Transition

33.—(1) Where under any Act, a person has or is entitled to a lien that may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or in the manner provided by the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, the person shall be deemed to be a lien claimant having a possessory lien under Part I (Possessory Liens) of this Act and the lien may be enforced under Part III (Redemption, Sale or Other Disposition) of this Act.

Idem

(2) A lien that arose before the coming into force of this section and that could have been enforced under section 52 of the *Mechanics' Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980, or under the *Warehousemen's Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980, or under the *Unclaimed Articles Act*, being chapter 513 of the said Revised Statutes, may continue to be enforced as if those Acts had not been repealed or the person claiming the lien may enforce the lien under Part III of this Act as if the lien were a possessory lien under Part I.

34. Subsection 2 (8) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the third line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

35.—(1) Subsection 147 (13) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section 33, is further amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth and ninth lines and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

(2) Subsection 190 (5) of the said Act is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the fourth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

36. Subsection 23 (3) of the *Niagara Parks Act*, being chapter 317 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 38, section 3, is amended by striking out “section 52 of the *Mechanics’ Lien Act*” in the eighth line and inserting in lieu thereof “the *Repair and Storage Liens Act, 1989*”.

37. The following are repealed:

Repeals

1. The *Mechanics’ Lien Act*, being chapter 261 of the Revised Statutes of Ontario, 1980.
2. The *Unclaimed Articles Act*, being chapter 513 of the Revised Statutes of Ontario, 1980.
3. The *Warehousemen’s Lien Act*, being chapter 529 of the Revised Statutes of Ontario, 1980.

38. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

39. The short title of this Act is the *Repair and Storage Liens Act, 1989*.

Short title



